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COURT OF GENERAL SESSIONS OF THE PEACE,
City and County of New York. Part III.

----- X
THE PEOPLE OF THE STATE OF NEW YORK, ;

-against-

CHARLES SCHMIDT, impleaded with
HENRY LANG.

Before:

HON. EDWARD SWANN, J.,

and a jury.

----- X
New York, January 12, 1910.

Indictment filed December 21, 1909.

Indicted for robbery in the first degree, &c.

APPEARANCES.

FOR THE PEOPLE: ASSISTANT DISTRICT ATTORNEY CHARLES F. BOSTWICK.

FOR THE DEFENDANT: MR. W. G. KIER.

Peter P. McLaughlin,
Official Stenographer.

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MR. KIER: I move that all the witnesses other than the one testifying remain within call outside.

THE COURT: So ordered.

Mr. Bostwick opens the case on behalf of the People.

F R A N K B Y R N E, a witness for the People being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BOSTWICK:

Q Where do you live? A 838 Girard avenue.

Q How old are you, Byrne? A 20.

Q What is your business? A Electrician.

Q Do you remember the night of November 13, and the morning of November 14th last? A Yes, sir.

Q Do you know Henry Platt? A Yes, sir.

Q Do you know the defendant, Charles Schmidt?

A Yes, sir.

Q Do you know Henry Lang? A Yes, sir.

Q Are any of these persons known by nicknames?

A Henry Lang, we used to call him Heine.

Q Are you known by a nickname? A Yes, sir.

Q What is it? A Huckle.

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BY THE COURT:

Q What was Lang's name? A Heine.

Q How do you spell Heine? A I guess it is H-e-i-ne.

THE COURT: What was the next nickname
for Schmidt?

MR. BOSTWICK: No, sir, Huckle was for Byrne.

THE COURT: That is this witness?

MR. BOSTWICK: Yes, sir. I bring the facts
out as it may appear later in the testimony that
they speak of these people in this way and we want
to know who they are talking about.

BY MR. BOSTWICK:

Q Where did you first see any of those three persons?

A 149th street and Courtlandt avenue, back of the saloon.

Q What street? A 149th street.

Q And Courtlandt avenue? A Yes, sir.

THE COURT: You see we want that last juror
to hear you, every word you say. Now, if you just
talk to him all the balance can hear you. You
cannot shout it too loud.

BY MR. BOSTWICK:

Q Did you meet there by appointment or accident,
149th street and Courtlandt avenue? A Met there by appoint-
ment with Henry Platt.

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Q How did you come to congregate or meet at this place, whose saloon was it -- a saloon? A A saloon, yes, sir.

Q 149th street and Courtlandt avenue? A Well, the four of us --

Q Who were they? A Platt, Lang, Schmidt and myself.

Q And yourself? A Yes, sir.

Q What did you do there? A We had two drinks, two rounds of drinks.

Q What did you drink? A Beer.

Q About what time was it when you met there? A About half past ten.

Q When you arrived there or when you left? A When I arrived there.

BY THE COURT:

Q That was 10.30 p.m.? A Yes, sir.

BY MR. BOSTWICK:

Q Now, what time did you leave there? A About half-past 11.

Q Where did you go from that place? A To Protection Hall, 152nd street and Courtlandt avenue.

Q Who went with you? A Platt, Schmidt, Lang and myself.

Q Was there anything going on at that place that

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night? A Yes, sir; a dance.

Q You did not go to the dance, did you? A No, sir.

Q When I say you I mean any one of the four, --
none of the four went to the dance? A No, sir.

Q But downstairs there was a drinking place?

A Yes, sir.

Q What did you do down there? A We had one
drink, one round of drinks.

Q You had one round of drinks? A Yes, sir.

Q Tell us what happened after that? A Well, I
left the three of them sitting at the table and I went in
the toilet. I came out when they disappeared, about four
or five minutes afterwards, I didn't think nothing of it.
I stood at the door, a crowd came down for supper, I stood
watching them, and all of a sudden a fellow named Mr. Al-
brecht pushed me aside, he ran out the door, I thought
there was something the matter, I ran out too and I
found Platt and Mr. Albrecht's arms.

Q Was he bleeding? A Yes, sir.

Q Who is Ahlbrecht? A He was one of the witnesses.

THE COURT: He has not appeared, that name
has not appeared before in the testimony?

MR. BOSTWICK: No, sir.

Q You found Platt in Ahlbrecht's arms? A Yes, sir.

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Q Platt was wounded? A Yes, sir.

BY THE COURT:

Q What sort of a wound was it?

MR. BOSTWICK: I have the surgeons here.

CROSS-EXAMINATION BY MR. KIER:

Q Now, you and Schmidt, this young man here, and Lang and Platt, the complainant all met down at 149th street and Courtland avenue about 10.30? A Yes, sir.

Q You were all there friends for about an hour or so?
A yes, sir.

Q No disorder of any kind between you? A No, sir.

Q This man Lang nor any one there was having any trouble with this man or Lang,-- nor any one there was having any trouble with Lang? A Not that I know of.

Q You were with the boys, you were all good fellows?
A Never had any trouble with them when I was there.

Q You were all drinking, good fellows? A Yes, sir.

Q You went out, the same three, Lang, the complainant and the boy up to 152nd street? A yes, sir.

Q That is three or four blocks away, isn't it?
A yes, sir.

Q That is up to Protection Hall? A yes, sir.

Q That is right? A Yes, sir.

Q Now then did you get there about 11.30? A Yes, sir.

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Q You stayed there sometime? A Yes, sir.

Q An hour or two together? A Around that.

Q You and Lang and Schmidt and the complainant were all good friends there? A Yes, sir.

Q No trouble at all? A No, sir.

Q Then the crowd came down from upstairs, of Polacks I believe, were they? A I couldn't say for sure, I guess they were.

Q They were coming down from upstairs?

THE COURT: What makes you think that --
is that material?

MR. KIER: I think it is.

BY THE COURT:

Q Were they foreigners? A Yes, sir.

Q Were they speaking a foreign language? A Yes, sir.

Q Did you recognize what language it was? A No, sir.

BY MR. KIER:

Q They all came down to go out, a crowd of them?

A Yes, sir.

Q Then it was you heard about this trouble, is that right? A It was only one went out, that was Mr. Albrecht, he ran out of the door, pushed me aside.

Q I am talking of the crowd coming downstairs? A Going in the next room for supper.

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Q Coming downstairs from supper? A Yes, sir.

Q From upstairs downstairs? A Yes, sir.

BY THE COURT:

Q The dance was upstairs? A Yes, sir.

Q What sort of a dance was it, given by whom do you know?

MR. BOSTWICK: That will be brought out later.

BY MR. KIER:

Q About 50 of them were coming down there?

A Yes, sir.

Q Was that at the back part of the saloon they were coming down? A It was right at the entrance to the saloon.

Q Near where this other trouble occurred? A Yes, sir.

Q Near where you saw Lang in Albrecht's arms?

A yes, sir.

Q Or at least Platt? A Yes, sir.

Q It was right before you saw Platt in Ahlbrecht's arms that this crowd was coming down? A Yes, sir.

Q It was right close by there? A Yes, sir.

Q There was a lot of confusion, of course, was there not?

A yes, sir.

Q All around?

(No answer.)

RE-DIRECT EXAMINATION BY MR. BOSTWICK:

Q None of those people that came down from the dance

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went out of the door, did they? A No, sir.

MR. KIER: I object to that.

BY MR. KIER:

Q There was about 50 coming down? A Yes, sir.

Q You didn't watch each one of the 50? A I was right at the entrance of the door.

Q Did you see every one of the 50 to know where any one might have gone, out of the door? A Yes, sir.

Q Did they march down like soldiers? A No, sir, marched out pretty orderly though.

Q There was no captain or anything? A No, sir.

Q Marching in crowds -- you were not particularly interested in any one of them whether they went into that room or not? A No, sir; I was not interested in them.

Q There was a crowd of 50 and you only watched them as a crowd? A Yes, sir.

Q You only saw them as a crowd? A Yes, sir.

Q You weren't watching them at all any more than seeing them, you had no interest in them? A Yes, sir, watching to see who I knew.

Q You didn't hear any alteration then, did you?

A No, sir.

Q You did know a few and you were watching for the ones which you knew? A yes, sir.

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Q You don't know where some of the others went , did you, you don,t know actually where the 50 went? A I seen them all go inside.

Q That were close by where this trouble occurred?

A yes, sir.

BY MR. BOSTWICK:

Q Did any one of them go out of the door? A No, sir.
to

THE COURT: In the street-- that is they came
downstairs?

A No, sir.

Q They all went into the dining room? A Yes, sir.

BY MR. KIER:

Q I want to ask you again, you say about 50 came down, you didn't watch each and every one of the 50, they were close to that door when they came down, weren't they? A Yes, sir.

Q It took them how long to come downstairs, 10 or 15 minutes? A Yes, sir.

Q During that time you don't know whether one or two slipped out of that door, do you? A I didn't see nobody slip out.

Q You won't swear somebody didn't go out of that door?

A No, sir, I won,t swear to it.

BY THE COURT:

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Q Where were you standing? A Right by the door.

Q That is the door that lead into the street?

A Yes, sir.

Q Now, did you see anybody go by you into the street while standing there? A I didn't take notice.

BY MR. KIER:

Q You didn't take notice? A No, sir.

MR. KIER: That is all.

MR. BOSTWICK: I am going to call two witnesses out of the regular order so that they can go back to the hospital.

THE COURT: Very well.

MARK J. GOTTLIEB, M. D., a witness called on behalf of the People, being duly sworn, testified as follows.

DIRECT EXAMINATION BY MR. BOSTWICK:

Q Where do you reside? A I reside at the Lebanon Hospital.

Q Are you a physician connected with that hospital?

A yes, sir.

Q What hospital? A Lebanon Hospital.

Q Where is that? A Corner of Westchester and Cauldwell well avenues, Bronx

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Q How long have you been associated with that hospital? A Since March 5, 1909.

Q In what capacity? A In the capacity of intern.

MR. KIER: There is no question of the doctor's competency. We will agree that he is a competent gentleman in his profession.

BY MR. BOSTWICK:

Q Do you remember the case of Henry Platt, who was brought to that hospital? A Yes, sir.

Q Where did you first see him? A First saw him, if I recollect correctly, about on November 14, at 152nd street and Courtland avenue on the inner side of a fence adjoining a saloon.

Q The jury cannot hear you. Will you repeat that?
A On November 14th at 152nd street and Courtland avenue on the inner side of a fence adjoining a saloon.

Q Did you go there on an ambulance? A yes, sir.

Q In response to an ambulance call? A yes, sir.

Q About what time was it when you got there? A Well about I should say, about 2.30 in the morning, I don't know exactly.

Q Would you kindly describe the condition in which you found Henry Platt upon arriving at that place at that time?
A Found the patient lying flat on the ground, on his back. He would not respond to any stimulation; he would not respond

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to any loud hollering; he was entirely unconscious; he was bleeding from the left side of his head, and on examination at the time I found a wound about one inch long on the left side of his head and about two inches above and a little behind the left ear in rough terms -- of course in medical terms I could give you a more accurate description.

Q What did you do for him? A I applied a bandage, put him in the ambulance and took him to the hospital.

Q Was he still unconscious when you put him in the ambulance? A Yes, sir.

Q How long was it before he regained consciousness? A I should say about a half an hour; he was never fully conscious until -- for some hours after the assault.

Q What was the nature of the wound that had been inflicted? A It was a laceration of the scalp down to the bone.

Q Was it an incised wound? A It did not look so.

Q It did not look so? A No, sir.

Q From its appearance can you state what, in your opinion, was the instrument, or nature of the instrument that was used?

MR. KIER: Objected to.

Q Which caused this wound?

THE COURT: He may state whether a blunt

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or sharp instrument caused it.

MR. KIER: Objected to.

THE COURT: A physician can tell with reasonable certainty whether it was caused by a blunt or sharp instrument.

BY MR. BOSTWICK:

Q Can you tell the jury whether the wound that you saw was caused by a sharp instrument or by a blunt instrument?

A I don't think that is a fair question.

Q You mean to say that you cannot? A That is deductive, and not evidence.

Q Well it is evidence provided---

MR. BOSTWICK: I will frame another question.

BY THE COURT:

Q Was the wound such as would have been caused by coming in contact with a stone?

MR. KIER: I object to that question.

THE COURT: That is subject to objection but there is no objection in asking if he knows from an inspection of the wound whether it was caused by some blunt instrument or by some sharp one, and by an instrument I don't mean necessarily a weapon some blunt object.

MR. KIER: Striking against the wall you might

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include that.

THE COURT: Yes, he is not telling whether his head was smashed against the wall.

MR. KIER: He has said it was not an incised wound.

THE COURT: He can tell whether it was done with a sharp instrument.

BY MR. BOSTWICK:

Q Was the wound such a wound as could have been caused by coming in contact with a stone? A It could be a wound that might be inflicted by any blunt instrument, that is as far as I can state.

THE COURT: That is all that he can say.

BY MR. BOSTWICK:

Q How long was he in the hospital? A That I don't know.

Q Has he, as a result of that accident, received any permanent injury? A Well, I do know that the man before he was struck could hear very well out of his left ear and now he has some difficulty in hearing.

Q The hearing of the left ear is the one that is impaired? A Yes, sir.

CROSS-EXAMINATION BY MR. KIER:

Q You say that you do know that he could hear well from the left ear. You have no personal knowledge of that, that

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is only what you were told? A I have been told so.

MR. KIER: I ask that that be stricken out.

THE COURT: It isn't really material anyway.

MR. KIER: I don't think it is, but I ask that it be stricken out.

THE WITNESS: I think the house surgeon can give you more positive information.

Q Dodctor, as you state, that wound that you saw could have been made by striking a stone wall or a stone step or a hard substance like that? A I said a blunt instrument.

THE COURT: A baseball bat could have done it.

MR. KIER: It could have been also done by striking a wall or a step or some hard substance?

THE COURT: Those are defined as blunt instruments.

Q Won't you say that a blunt instrument could be any of those things, a wall, a step or anything like that?

A Yes, sir.

DAVID JOSEPH, a witness called on behalf of the people, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BOSTWICK:

Q Where do you live? A 718 Fifth street, City.

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Q Doctor, you are connected with the hospital?

MR. KIER: I will concede that Dr. Joseph is a competent and good physician.

BY MR. BOSTWICK:

Q What relation do you bear to the hospital?

A House surgeon.

Q Do you remember the case of Henry Platt, a patient there? A Yes, sir.

Q When did you first see him? A On the morning of November 14th.

Q Will you state his condition when you saw him?

A Well I found him unconscious but able to respond to questions after a little close questioning; he would not respond just to the ordinary question but had to be aroused. He was very excitable and wanted to get out of bed but after a little while he quieted down -- totally unconscious.

What

Q I want you to describe is the nature and extent of any wound that he had, if any? A Yes, sir, he had -- he had a small scalp wound on the side of his head.

Q Will you speak so that the last juror can hear you? A He had a small scalp wound on the left side of his head. In medical terms it was right over the parietal region just a little above the ear, a little back of and above the ear, right over the curved of the skull, extending right down

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to the bone and no apparent break of the bone that we could see at that time.

Q How long was he in the hospital? A Well, that I cannot remember, he was discharged after sometime. It is on the records there.

Q Did he stay over the first night? A Yes, sir, he stayed for several weeks.

Q Some six or eight weeks? A The exact time I don't know.

Q Was it an incised wound, Doctor? A Well, it was more -- it was a lacerated wound.

Q It was not an incised wound? A How do you mean?

Q I understand that a cut wound done by -- was it done by a cut or was it done by some sharp instrument or by some blunt instrument? A On the scalp a blunt instrument might produce the same wound as a sharp instrument, on the skull.

Q Only as far as the scalp is concerned? A Yes, sir.

Q From the nature of the wound as you saw it might it not have been done by a blunt instrument? A Surely.

Q Has Platt so far as you know any permanent injury as the result of that accident? A So far as I know -- well I think he has, I don't know this really -- that he has some slight deafness, he has some deafness.

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Q He has some deafness? A Yes, sir; some deformity.

THE COURT: He can state that he has now some deafness.

THE WITNESS: The extent of his deafness I don't know, but he has some deafness and some deformity.

BY MR. BOSTWICK:

Q What deformity? A The injury of the scalp and some portion of his bone which was removed at the time of the operation.

Q Was he operated upon? A Yes, sir.

Q When? A The day of admission.

Q What operation was performed? A He was trephined.

Q By trephining do you mean that a circular saw is used?

A Not necessarily.

Q What do you mean by trephining?

MR. KIER: I object to that.

Q What do you mean by trephining? A Well any instrument can be used in trephining.

Q What instrument was used in this case? A Well we used a trephine saw, a circular saw.

Q You used a circular saw? A Yes, sir, a circular saw but not the kind of a saw you mean; it doesn't make any dif-

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ference what saw is used or what instrument.

Q What did you do in this case? A They removed a part of the bone of the skull.

Q Did that expose the brain? A Yes, sir; that did not expose it -- except the covering of the brain.

Q What was done after the trephining? A Well, there were several small parts of the bone removed on each side, smoothing out the opening, enlarged it and the underlying structure was --

Q What was done with the piece of bone taken away as a result of the trephining operation? A We threw that away, we don't use that,

Q The patient got along without it? A He does get along.

Q What did you substitute for it? A Nothing.

Q We find something there now? A No, sir.

Q Still a hole? A Yes, sir, nothing except the skin, the scalp and the muscle underneath.

Q Is that not a dangerous condition in which to be? A Well it is all connected with some danger.

Q In other words a blow on that portion of the body would that be any more fatal than a blow upon a part of the skull where there was bone? A No, sir, not unless it penetrated the brain, but in the nature of things it could be

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penetrated more readily where there was no bone?

MR. KIER: Objected to. I think we got enough about this fellow's injury.

CROSS-EXAMINATION BY MR. KIER:

Q The man the way he is now can live until he is 90 as far as that is concerned? A Yes, sir.

Q You started out by telling us it was a small wound of the scalp? A yes, sir, a small wound of the scalp.

Q You followed by saying a blunt instrument. When you used the word instrument that could be a step, a tone-wall or anything of that kind? A I don't mean that.

Q When you use the word blunt instrument, that may be that his head struck against a steep or a stonewall?

A Yes, sir, surely.

Q That is what you mean, it would produce the same thing?

A yes, sir.

J O S E P H Z A C H A R Z O W S K Y, a witness called on behalf of the people, having been duly sworn, testified as follows.

DIRECT EXAMINATION BY MR. BOSTWICK:

Q Where do you live? A 639 Courtland avenue.

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Q Mr. Zacharzowsky, near what street is that? A Corner of 152nd street and Courtland avenue.

Q How old are you? A 51 years of age.

Q Will you kindly speak so that the jury, all of these jurors at this end of the box can hear you. Are you the proprietor of protection Hall? A yes, sir.

Q What is the nature of that institution? A Well I got on the corner, I got a barroom or cafe, and in the back from the cafe is a bowling alley, and I use it occasionally, I use it whenever I have any suppers served served from the ball room, I use the bowling alley for a dining room. I got a hall upstairs, not too big, and I let it out exclusively only to societies; I wouldn't run no open dance whatever.

Q Did you have any society there on the night of November 13th? A yes, sir.

Q What society did you have there? A That was a Bavarian society, they had what they call celebrating the Kurffrie.

Q They had a dance? A Yes, sir, they had three pieces of music.

Q This dance is upstairs? A Yes, sir.

Q Do you remember this particular night, November 13, and the morning of November 14th? A Yes, sir.

Q Something occurred there? A Yes, sir.

Q You recollect that incident? A Yes, sir.

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Q Do you know the defendant Schmidt? A Yes, sir.

Q Do you know Harry Lang? A Well, I seen him, I know him by appearance, but I never knew that his name was Henry Lang.

Q Did you know him by the name of Heine? A Neither that. I only seen him when I passed 149th street, I seen a young fellow of that kind of appearance, and I seen him around hang the corners.

Q Do you know Frank Byrne? A I didn't know him, I know him now but I didn't know him before; I didn't take notice to him.

Q Do you know the name of Huckle? A No, sir.

Q Did you know Henry Platt? A No, but I know him, he knew me but I couldn't recollect.

Q You know ^{who} they are now? A Yes, sir.

Q Were any of these four people in your place on the night of November 13th or on the morning of November 14th?

A Yes, sir.

Q State when you first remember seeing them in your place that night? A It was just around 12 o'clock and being just around 12 o'clock I just went in the back room, and they had a round of drinks, I served them with a round of drinks, and then I seen that the defendant here, Schmidt, and Lang, and the other two gentlemen, Platt and what they call Huckle

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or Byrne --

Q After they had the round of drinks what happened?

A Well I was busy serving suppers for the party; there was a party, it was attended by about 50 or 60. I was busy, I had two waiters working with me. I went in the back, to the dining room, to attend to the suppers there, they were getting supplied with the meals that they ordered.

Q You went in the back. You mean on the downstairs floor? A No, sir, in the dining room, everything that I had was on the ground floor.

Q Is that the dining hall? A Yes, sir, what I use as a dining room.

Q When you say dining room you mean that which is otherwise a bowling alley? A Yes, sir.

Q That is on the downstairs floor? A Yes, sir the down floor.

Q Not the floor on which the dance was taking place? A No, sir.

Q Did the people come downstairs at this time or not? A Yes, sir, the people came downstairs, and I was supplying them with suppers.

Q Did all the people from upstairs come downstairs to the supper? A There might be about a dozen that didn't come down for supper.

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Q State what happened? A While I was pretty near through serving the supper I went in the barroom and I got a box with change preparing myself to collect for the suppers.

MR. KIER: I object to that as immaterial.

THE WITNESS: (Continuing) And I took a seat, I took a seat in front of the door, in front of the entrance, and by occupying the seat I heard some kind of a noise and most certainly it is my business to look out whatever it is, because I didn't hear no disruption whatever.

Q You heard a noise? A yes, sir, I heard a noise outside

Q What kind of a noise? A I opened the door. I went out side to the second door to the yard, and I seen the defendant Schmidt standing right in the doorway and he says "Come out you sons of bitches, come out here in the yard, we are going to trim you". So I took the door, the door was open, swinging to my right, I caught hold of the door and tried to close it, about swinging the door, about three-quarters I heard a crash coming, a sound like a silent explosion, like a bomb, where you cover it, a silent sound, but a sound, dull sound but pretty loud. I had one of my help alongside of me and he says "Somebody got hurt".

Q Who was it said this to you?

MR. KIER: I ask that it be stricken out.

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THE COURT: It doesn't make any difference.

THE WITNESS: Jake, one of the witnesses here who was helping me out on that night. We turned around and we seen a young man standing inside the door I opened the door and I seen the defendant Charlie Schmidt and Henry Lang to run out of the yard.

Q This defendant? A Yes, sir.

Q And Harry Lang? A Yes, sir.

Q As you opened the door they ran out of the yard?

A yes, sir.

Q Was anybody else in the yard at that time?

A No, sir.

Q When did you see Platt prior to hearing this sound?

A While he was there behind my cafe, in the small room; prior to that, I seen him while he was sitting at the table.

Q Did you see him leave that table? A No, sir.

Q You were not an eye witness to that? A No, sir, because I was in the back at that time.

Q Now after hearing this sound what did you do? A Well we assisted that wounded man, we took him in.

Q You haven't told us about any wounded man? A After this --

Q After you heard the sound what did you do and find?

A We turned around and there was a light inside the door.

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Q Outside? A Yes, sir, in the yard; there was a little fellow standing there that helped around, Jake Albrecht, and he says "There is somebody got hit sure enough".

Q Albrecht is the name you could not remember?

A Yes, sir, Jacob Albrecht. We turned around, that man had a cap on his head. We took the cap off.

Q Who had? A Platt. We took the cap off. We seen he was bleeding fiercely. We took him inside the little partition which is between the yard and between my hall and sat him on the stoop and tried to wash his wound, got some hot water from the kitchen and finally he fainted, and we couldn't do nothing else but telephone to Headquarters to get an ambulance and take him away from the premises.

Q He never said anything, did he -- he did not say anything after you heard this sound? A No, sir, he didn't say anything, although while we was attending to him, Jake Albrecht was attending to him, washing him off with cold water it seems to me it didn't agree with the wound and he said "Let go of me," he said, "Let go of me", that is the expression I heard from him.

Q Then the ambulance surgeon arrived?

MR. KIER: I ask that the last statement be stricken from the record.

THE COURT: Does it hurt your client?

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MR. KIER: Not a particle.

THE COURT: I wouldn't object unless it hurt.

Q Then the ambulance surgeon arrived? A Yes, sir.

Q And took him away in the ambulance? A Yes, sir.

CROSS EXAMINATION BY MR. KIER: "

Q Mr. Zacharzowsky, is that it? A Zacharzowsky.

Q Now you said that about 50 of those persons of the association that was upstairs came downstairs? A yes, sir.

Q And went back into your bowling alley? A Dining room.

Q Well it was a bowling alley? A Well we use it for a dining room the same.

THE COURT: It was a dining room then.

BY MR. KIER:

Q And they all became seated there? A Yes, sir.

Q Then you waited on them all? A Yes, sir.

Q Then you were waiting for your change or money, is that it? A I was just in the way of sitting down at the door to collect the amount for the suppers.

Q But they had all been seated? A Yes, sir, in the dining room.

Q Then they all came down and had been seated and you had served them when you heard this trouble? A I was just -- they had finished their supper.

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Q But they had come down and had been seated before this trouble occurred -- they had been eating? A Yes, sir.

Q They started to eat? A Yes, sir.

Q They were sitting and started to eat? A Yes, sir.

Q They were finishing up? A Yes, sir.

Q Before this trouble occurred? A Yes, sir.

Q Then this trouble did not occur just after they were coming downstairs, as they were coming downstairs, did it?

A No, sir.

Q That is right, is it?

(No answer).

As

Q they were coming down stairs to supper the trouble did not occur then? A yes, sir.

Q It was sometime after? A Yes, sir, it must have been about a half an hour after.

Q At least a half an hour after they got downstairs?

A Yes, sir.

Q And were seated at dinner? A Yes, sir.

Q Now the trouble occurred outside, and you were inside when it occurred, weren't you? A Yes, sir.

Q Of course you didn't see who hit him or anything like that, you couldn't see through the door? A No, sir.

Q You heard a sound? A Yes, sir.

Q Now then Mr. Zacharzowsky when you say the defendant sa¹⁴

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"Come out you son of a bitch" he looked into the barroom that was there, wasn't it, he was looking into the barroom?

A No, sir.

Q Where was he looking? A He was standing in the yard.

Q How many had gone out then? A Nobody had went out.

Q How do you know they didn't go out? A The yard is from the street, and the hall is before you reach the yard.

Q Now then where were you standing when he was standing at the door saying that? A I was going out from the dining room. When I came out from the dining room there was two doors before I reached the yard and there is a door leading from the little partition between the yard and between my hall, that was open, the outside door which leads directly from the little partition to the yard, that is where the defendant was standing there, right in the open door.

Q That was how far away from you? A When I came out I wasn't about as much from him as one foot. I pushed him back and I says "Walk about your business, leave my place alone, walk about your business, don't create a disturbance in my place.

Q You pushed him right back? A Yes, sir.

Q It was then, in front of you, you heard this sound outside? A No, sir.

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Q Well when? A I testified to that effect -- I caught hold of the door, I pushed him back, I says, "Walk about your business, don,t disturb my place. " I caught hold of the door and tried to swing it closed, and about swinging it about three-quarters to close it I heard the crash coming.

Q Was the defendant facing you at that ~~xim~~ moment?

A No, sir, he couldn,t face me then because I had the door between him and me.

Q He was right in front of you, right near you?

A Yes, sir.

Q Between ^{the} partially closed door was he? A Yes, sir.

Q He was where you could see him? A I couldn,t see him then.

Q The door was three-quarters open? A Yes, sir, three -quarters.

Q You swung it to? A I closed it three-quarters, not three-quarters open but three-quarters closed.

Q You could see him, he was in front of you at that time?

A No, sir, he was between me and behind the door.

Q With your eye on him then? A I could not have my eye on him no more.

Q He was on the threshold, wasn't he, right there of the door? A yes, sir.

Q And just as you closed the door? A I didn't close it.

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Q Three-quarters then? A Yes, sir.

Q Just as you closed it three-quarters he was facing you and you heard this sound outside? A No, sir, I heard the sound -- outside in the yard.

Q Where you couldn't see him? A No, sir.

Q That is true, isn't it? A Yes, sir; I only heard the sound.

Q How long did that take, how many moments did it take for that to take place? A Well, it might be an occurrence of less than 15 seconds because when I came out I pushed the defendant back, and I caught hold of the door and about-- I didn't estimate two moments, about swinging the door around the drash came, it might have been between eight and 15 seconds

Q You heard no trouble between him and Platt did you?

A No, sir, I didn't hear anything.

Q You knew this boy don't you? A Yes, sir.

BY THE COURT:

Q Did you hear Schmidt the defendant tell Platt to come out? A No, sir.

Q Who was it he spoke to when he said come out?

A When he spoke, he spoke to somebody-according to the information they were put out of the place for some reason, that is Lang.

Q Who was it used the expression and said "Come out here"?

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A Charlie Schmidt.

Q The defendant here? A Yes, sir.

Q Now being tried? A Yes, sir.

BY MR. KIER:

Q But Platt was outside then? A Yes, sir.

Q When he called out "Come out", Platt was outside?

A Yes, sir; Platt was outside.

Q You know this boy for sometime, don't you?

A Yes, sir.

Q He has got a good reputation, he is all right, isn't he? A Well, I never had no dealings or anything but friendly terms with him.

Q He lives in your neighborhood? A Yes, sir, about three blocks away.

Q You have known him for some years? A Yes, I know him about three or four years.

Q He has been all right so far as you know? A Yes, sir to my knowledge, yes, sir.

RE-DIRECT EXAMINATION BY MR. BOSTWICK:

Q Didn't you say that you didn't see Platt go out?

A No, sir, I didn't see Platt going out.

Q Then when counsel asked you whether Platt was outside how did you know that Platt was outside? A Because

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I didn't leave the door. As soon as I came out I seen the defendant standing in the doorway. I pushed him back, and when the crash was delivered I seen that Platt standing outside. He received the crash. Between the time I came out and pushed the defendant back there was nobody got out of the door because I stood right in the doorway.

Q So this boy stood inside and Platt was outside?

A Both outside.

Q Both outside? A Yes, sir.

J A C O B F. A L B R E C H T, a witness called on behalf of the People, having been duly sworn, testified as follows

DIRECT EXAMINATION BY MR. BOSTWICK:

Q Where do you live? A 283 East 152d street.

Q How old are you? A 23.

Q Who do you work for? A Eugene R. Kraus.

Q Where? A 283 152nd street.

Q That is where you live? A Yes, sir, that is where I work.

Q Do you remember the night of November 13 and the morning of the 14th? A Yes, sir.

Q Where were you working that night? A I was working for Mr. Zacharzowsky, Protection Hall, 152nd street and Courtland

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avenue.

Q Do you know Lang? A Well I know him from being in the neighborhood, yes, sir.

Q Has he any nickname? A Heine.

Q You know Heine? A Yes, sir.

Q Do you know the defendant Charles Schmidt? A Yes, sir.

Q Domyou know Henry Platt? A Yes, sir.

Q Do you know Frank Byrne? A That must be Huckle, isn't it, a boy named Huckle--

Q Huckle is Frank Byrne? A Yes, sir.

Q Did you see them in the saloon of Protection Hall on the night of November 13? A Yes, sir.

Q That is the night they were having a dance upstairs?
A Yes, sir, there was a private racket upstairs, I believe.

Q A private racket upstairs? A Yes, sir.

Q Do you remember whether these people had a drink among themselves, the four boys? A Yes, sir.

Q This was about what time of night? A When I seen them it was just 12 o'clock.

Q What happened after they had a drink? A Well, I had a drink with them. I went upstairs to attend to my business. I had a drink with Huckle. I went upstairs to attend to business upstairs, and there was a young man came up and said his

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hephew was --

Q Somebody said something to you? A Yes, sir, to me.

Q Somebody came upstairs and told you something? A Yes, sir.

Q And as a result of what they told you what did you do?

A I followed that man downstairs.

Q You went downstairs? A yes, sir, I followed him downstairs. He walked into the back room of the saloon and took Mr. Lang by ^{the} shoulder and put him out in the street, and with that I was told to tell Mr. Schmidt to go out which I did.

MR. KIER: I object to that.

Q This man came downstairs with you? A Yes, sir.

Q And you both when where? A I came down with him and I went in the back room of the saloon.

Q What did he do with Lang? A Put him out in the street

Q Was this man connected with the place who put him out? A No, sir, he was running the dance upstairs.

Q He was one of the people running the dance? A Yes, sir

Q Do you know of your own knowledge why he put Lang out? A No, sir.

BY THE COURT:

Q Did you hear him say anything to Lang at the time he put him out? A Yes, sir.

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Q What did he say to him?

MR. KIER: Objected to.

THE COURT: That affects Lang only, not your client.

THE WITNESS: He says "This ain't no place for you you belong out in the street, coming in here and try to rob his nephew in the toilet", that is the reason he put him out.

THE COURT: The jury are instructed that that remark must not affect in any way this defendant who is a co-defendant with Lang but is being tried separately. This does not affect Schmidt,

Q He didn't say anything about Schmidt? A No, sir.

Then this man walked out and as he walked out, Heine had been outside, had been put out, and as he walked out Schmidt walked out and Heine came in the yard and as he did there was a crash came, the door was open and Joseph Zacharzowsky went to shut the door and told them to go home about their business. The crash came, the door was opened in less than a minute and Mr. Schmidt and Lang ran out of the yard.

Q What did the crash sound like? A Well, it sounded like a dull crash, like a hit of a stone or something.

Q Where was Platt at this time? A Standing right outside the door in the yard.

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Q Platt had gone outside? A Yes, sir.

Q Was wnybody with Platt at the time, do you know?

A Why not, when he walked out alone.

Q At the time you heard the crash, did you see anybody?

(No answer).

Q You didn't see Platt at the time you heard the crash, did you? A At the time I heard the crash?

Q The very instant you heard the crash? A No, sir; we just shut the door.

Q So you couldn't see outside? A No, sir.

Q But immediately upon opening the door who did you see? A I seen Mr. Schmidt and Heine run out of the yard and I stumbled on Mr. Platt and picked him up.

Q Stumbled on Platt's body? A yes, sir.

BY THE COURT:

Q Your name is Albrecht? A yes, sir.

BY MR. BOSTWICK:

Q Did you see Platt go out of the door? A Yes, sir.

Q How long before you heard this crash or this thud was it between the time that Platt went out of the door and the time you heard the thud? A I should judge about four or five minutes.

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CROSS-EXAMINATION BY MR. KIER:

Q Four or five minutes? A Yes, sir.

Q Not eight to 15 seconds -- that was when Zacharzowsky was at the door closing it? A Yes, sir.

Q Four or five minutes? A Yes, sir; when Mr. Platt walked out.

Q When Mr. Platt walked out? A Yes, sir; Heine and Schmidt had been out in the yard before that.

Q Schmidt came back? A Schmidt and Heine came back, both of them.

Q Schmidt in the meantime remained back, and Heine was out, is that right? A They both came back in the yard together. Schmidt was in the front of Heine, Heine in back of Schmidt, close together.

Q What do you mean, four or five minutes? A As Mr. Platt walked out--

Mr. Platt walked out

Q Mr. Platt walked out--about four or five minutes before he walked out and the crash.

Q Do you know where the man went who had the trouble with Lang? A He went upstairs about his business.

Q How many people were up there when he went up?

A When this man went upstairs?

Q When the man who had the trouble with Lang? A I should judge about 75 in the racket.

Q He had no trouble with the boy Schmidt? A No, sir.

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Q Nor Platt had no trouble with Schmidt? A No, sir, not that I know of.

THE COURT: Is there any member of the jury that would like to ask the witness a question.

BY A JUROR:

Q Was Schmidt put out in the street or in the yard?

A Schmidt wasn't put out at all. He was asked to walk out.

Q Lang? A He was put out to the middle of the street.

Q How do you get from the street into the yard? A You go through, you come in on Courtland avenue, you go through the yard, a bit of the yard about 30 feet I guess or 40 feet, and about 15 feet wide or 10 feet.

BY THE COURT:

Q Is there an entrance on Courtland avenue? A Yes, sir, an entrance into the hall, you go through a little alley and then go up through the hall.

Q What do you enter on 152nd street? A The side door of the saloon.

Q On 152nd street? A Yes, sir.

BY MR. KIER:

Q Do you know the defendant for sometime? A Yes, sir.

Q His character is all right, isn't it? A I don't

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know anything wrong about him.

MR. BOSTWICK: I object to that.

Q You never have heard anything against him? A No, sir.

MR. BOSTWICK: I move to strike out that
testimony.

BY THE FIRST JUROR:

Q You said that you had a drink with the boys together?

A Yes, sir, Mr. Huckle.

Q What did you drink? A I drank a short beer.

Q Did you serve this? A No, sir, I didn't serve the
drinks.

Q Who served them? A I couldn't tell you who served
the drinks, they had drinks already when I came in and Mr.
Huckle asked me to have a drink with them which I did because
I know him being around the neighborhood and found him to
be a nice fellow and I said I would take a pony of beer.

Q Were they sober or intoxicated at the time?

A They were not exactly sober.

BY A JUROR:

Q Were you there at the time when you heard that remark,
past, "Come on out." A Yes, sir, I was standing in the
doorway.

Q Tell us about that, and state to whom was it said?

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A Well both of them, Schmidt and Mr. Lang.

Q Who was it addressed to, who was it meant for, the remark? A That is hard to tell because the man that put him out was upstairs, that man that put him out was upstairs he sent them out, why I suppose it was meant for the man who put them out, "Send them out, we will clean them up, we will trim them", those words came in.

BY MR. KIER:

Q You didn't mean Platt? A I don't know who he meant. he said, "Send him out".

Q Platt was outside then? A Yes, sir, standing alongside the door in front of me.

BY THE COURT:

Q He was standing with you at the time? A No, sir, there was a distance of about five or six feet away from them -- he was standing up against the door and I was standing here on the inside. (Illustrating)

Q Was he standing on the side of the door or was he standing on the threshold of the door? A No, sir, I should say about two feet away from it.

Q In the yard? A Yes, sir.

Q And these men were how many feet beyond him in the yard? A About five or six feet.

Q You saw that they were having that relative position

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when you heard Schnidt and Lang make that remark? A Yes, sir.

Q "Send him out"? A Yes, sir; just at that time my boss came out, my boss for the night, I was helping him out, and he says, "Don't bother with him, let them alone, let them go home", and as he was closing the door about three-quarters the crash came, the door was opened as quick as that and I seen Lang and Schmidt go out of the yard and I picked this man up.

Q Was there anybody else in the yard at that time?

A No, sir.

BY MR. KIER:

Q The yard was pretty dar wasn't it? A It isn't so very dark, I could see all over the yard.

Q Any lights in the yard? A No, sir.

Q Of any kind? A No, sir.

Q There were a lot of people around there that night, in the place? A Upstairs and inside; there wasn't a soul came out because they were eating supper at the time.

H E N R Y P L A T T, a witness for the people, having been duly sworn, testified as follows.

DIRECT EXAMINATION BY MR BOSTWICK:

Q Where do you live? A 328 Park avenue.

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Q Mr. Platt, how old are you? A 30 years old.

Q What is your business? A Printer.

Q I suppose you distinctly remember the date of November 13th and the morning of the 14th? A Me?

Q Do you remember the evening of November 13th and the morning of the 14th? A Well I was unconscious.

Q Do you remember before you were unconscious -- don't you? A Yes, sir.

Q That evening of the 13th where did you go first before your went to Protection Hall? A 149th street and Courtland avenue.

Q Who did you meet there? A Schmidt, Lang, Byrne and myself, four of us were there.

Q What did you do there? A We had a couple of drinks in the saloon.

Q What did you drink? A Beer.

Q Then did the four of you go out together or separately?
A All four went out together.

Q Where did you go? A protection Hall.

Q Where is that? A 152nd street and Courtland avenue.

Q About what time did you leave the saloon at 149th street? A About 11 o'clock.

Q You went to Protection Hall? A Yes, sir.

Q About what time did you get there? A Well, about

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half past 11 or quarter of 12.

Q Half past 11 or a quarter of 12? A Yes, sir.

Q What did you do when you got there? A Well we went inside the saloon.

Q Did you sit down or stand up? A Sit down at the table.

Q Have anything to drink there? A Yes, sir, we had a round of drinks.

Q Who was in the party? A Schmidt, Lang, Byrne and myself

Q Did anybody else have a drink with you at that time?

A No, sir.

Q Had you know Schmidt before this? A No, sir, this is the first time I ever knew him.

Q The first time you ever knew him? A Yes, sir.

Q Had you known Frank Byrne? A yes, sir.

Q What do they call Frank Byrne? A Huckle, a nickname.

Q Had you known Lang before, Harry Lang? A Yes, sir.

Q What is his name, his nickname? A Heine.

Q Heine? A Yes, sir.

Q How long after you got to Protection Hall saloon
did you have this drink? A I just couldn't tell you.

Q You just couldn't tell me? A No, sir.

Q Well it isn't material but I want you to tell first
after you had the drink -- what happened next, what did you do,

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who got up? A Well, Huckle was the first one to get up.

Q Where did Huckle go? A To the toilet.

Q He went to the toilet? A Yes, sir.

Q What happened while he was absent? A Well Lang was put out, they told him to go out.

Q Lang was put out? A Yes, sir, told to go out.

Q Did he go out? A Yes, sir.

Q That left you and Schmidt there? A Yes, sir.

Q Now then which one went out, you or Schmidt?

A Well Schmidt.

Q Schmidt went out? A Yes, sir.

Q That left you in there? A Yes, sir.

Q You went out? A Yes, sir.

Q Did you go out before Huckle came back from the toilet?

A Yes, sir, I went out before that.

THE COURT: Is that the order in which they went out. Now you repeat that, what was the order in which these men went out including yourself, who went out first?

THE WITNESS: Lang.

Q Who went out after Lang? A Schmidt.

Q Who went out after Schmidt? A Myself.

BY MR. BOSTWICK:

Q Did anybody else go out? A No, sir.

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Q What happened to you after you got outside the door?

A Why, I was hit.

Q You don't know what you were hit by? A No, sir.

Q Do you know anything after that? A No, sir; I was unconscious.

Q At the time you went out of that door did you have money in your pocket? A Yes, sir.

Q How much? A \$7.

Q In what denomination? A A five dollar bill and two singles.

Q When did you first miss that money? A Why after I was hit I didn't know where the money was and after I was in the hospital the money was gone.

Q The money was gone? A Yes, sir.

BY THE COURT:

Q Where did you have it? A In my pocket.

Q What pocket? A The right hand pocket.

Q Loose or in a pocket book? A Loose.

BY MR. BOSTWICK:

Q Who was the last person you saw just before you were hit? A That is something I could not tell you; I was unconscious on the ground when I was hit.

Q Just before you were hit who was the last person you saw just before you were struck or felt this blow?

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A Schmidt.

Q Schmidt was the last man you saw? A Yes, sir.

Q Now how many -- or what length of time of seconds or minutes , hours, days or weeks was it between the time you last saw Schmidt and the moment when you felt the blow?

A Well it was only a couple of minutes.

Q What is that? A A couple of minutes.

Q What does a couple of minutes mean; what do you mean by that? A About five minutes.

Q About five minutes? A Yes, sir.

Q Where was Schmidt the last time you saw him before you felt the blow? A Outside.

Q I know but how far off from you? A Well, from here to about the table, (Indicating).

Q When was the last time he spoke to you before you felt the blow? A In the saloon.

Q In the saloon? A Yes, sir.

Q What did he say to you in the saloon? A He said, "I guess I will go out".

Q Schmidt said that? A Yes, sir.

Q What else did he say to you, if anything more?

A Nothing more.

Q What made you go out? A My intention was to go home.

Q You went out to go home? A Yes, sir.

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Q When you get out did you stand at the door or did you move towards your home? A I stood there waiting for awhile at the door.

Q Who did you see while you stood waiting? A Nobody.

Q Nobody at all? A No, sir, nobody at all.

Q Wasn't there anybody at all there while you stood there waiting? A No, sir.

Q Where was Schmidt and where was Lang? A I couldn't tell you where Lang was.

Q Well where was Schmidt if you know? A Schmidt must have been outside.

Q What is that? A He must have been outside.

Q He must have been outside? A Yes, sir.

THE COURT: That leaves it uncertain where he was.

MR. KIER: It doesn't mean that he was outside.

If he don't know I would rather have him say so.

THE COURT: It means he does not know.

BY MR. BOSTWICK:

Q When did you regain consciousness? A After I was hit three days, I was three days unconscious in the hospital.

Q Where were you hit? A Here in the head.

(Indicating)

Q (Indicating) the left side of the head? A Fractured skull.

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Q Could you hear before the 13th of November?

A What is that?

Q Could you hear before the 13th of November very well in both ears? A Could I hear?

Q Yes. A Before I was hit, yes, sir.

Q Can you hear just as well now as you did before the 13th? A No, sir, I cannot.

Q In which ear? A The left ear.

Q The hearing of the left ear has become impaired?

A yes, sir.

Q You can,t hear so well in that ear? A No, sir.

Q How long were you in the hospital? A Three weeks.

BY THE COURT:

Q Did you hear any word or sound just before you were struck? A No, sir.

Q Just before the instant you were struck, the second before you were struck? A No, sir.

THE COURT: He says he did not hear any word or sound the moment before he was struck.

CROSS EXAMINATION BY MR. KIER:

Q You never had any words with this young man Schmidt, did you? A No, sir.

Q Were you good friends? A He was -- just the first night I ever met Schmidt.

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Q You were at 149th street with him, weren't you?

A yes, sir.

Q About how long, an hour or two? A Well about that, yes, sir.

Q Then when you came up to the saloon, up to Zacharzowsky you were there about an hour with him, weren't you, before this occurrence? A Yes, sir, about an hour.

Q You never had any words during that time? A No, sir.

Q You didn't show any money, did you? A Didn't show any money to nobody.

Q Nobody knew you had any money whatever? A I don't know whether they did or not.

Q You didn't show any? A No, sir.

BY THE COURT:

Q Let us get at this. Did you take out the money to pay for any drinks? A No, sir.

Q Did you pay for any drinks that night? A Not in Protection Hall.

Q Well how about the other places where you were, at the first place, the first saloon? A Me and Byrne was together.

Q You and Byrne were together? A yes, sir.

Q Did you take out any money to pay for drinks up there?

(No answer.)

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BY MR. KIER:

Q Was it just change you took out of your pocket or did you take out any bills? A No, sir, I didn't take out any bills.

Q Did you expose that money at any time that evening?

A No, sir.

Q Did you take out any bills out of your pocket at any time? A No, sir.

Q Did you tell anybody you had any money in your pocket? A No, sir.

Q Did you tell Byrne you had money in your pocket?

A No, sir, I didn't tell anybody I had any.

BY THE COURT:

Q You told nobody? A No, sir.

BY MR. KIER:

Q You say a little before the trouble -- how long before the trouble did you know that you had some money, had you looked at your money a couple of hours before? A Well I know when I left my home I had the money.

Q When you left your home you knew that you had that much money in your pocket? A Yes, sir.

Q What time was that that night? A Well I left my home at seven o'clock.

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Q Then after that you didn't bother, it was in there, you left it there, you didn't bother about it? A No, sir; I didn't bother, I knew it was safe.

Q You didn't look at it again? A No, sir.

Q Then when you were knocked senseless you said you were senseless for three days? A Yes, sir.

Q Of course while you were senseless you did not look for it? A No, sir.

Q At the end of three days in the hospital that was the first time you knew you had lost seven dollars? A The money was gone.

Q That was three days after the occurrence? A Yes, sir.

Q Am I right? A Yes, sir.

Q That is right? A Yes, sir.

Q Three days after the occurrence for the first time you looked and found the money was gone? A Yes, sir.

Q You were taken to the hospital, and you were in the hands of the hospital people and they were treating you?

A Yes, sir.

Q Nurses and everybody? A Yes, sir.

Q Everybody was treating you in the hospital, doctors and nurses? A Yes, sir.

Q It was three days after this occurrence you missed

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your money? A Yes, sir.

Q You did not look at it or see it from seven o'clock that night of the occurrence? A Yes, sir.

Q And the occurrence was about 12 o'clock?

A Yes, sir.

Q Is that it? A About 12 o'clock.

BY A JUROR:

Q Did you see anybody hit you? A Did I see anybody hit me, no, sir, I didn't see anybody hit me.

Q When you stepped out of the saloon to go home, did you step onto the street or into the yard? A In the yard.

Q In the yard? A Yes, sir.

Q Was there a stoop there? A No, sir; no stoop there.

Q Right flat out in the yard? A Yes, sir.

Q Three glasses of beer you drank that night?

A Yes, sir; we only had two glasses.

Q Is that all you had? A Yes, sir.

Q During the whole evening? A No, sir; in Protection Hall.

BY THE COURT:

Q The juror would like to know how much you drank the whole evening? A About four glasses altogether.

Q From seven o'clock in the evening when you left home

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until you had this accident? A Yes, sir.

Q Four glasses? A Yes, sir.

Q How long do you think you were standing outside the door way in the yard? A Well, about five minutes.

Q A juror would like to know why you were standing there?

A Well, my intention was to go home.

Q Why didn't you do it, why did you stay there for five minutes, did you have any idea in that? A Well, no, sir.

Q Were you drunk? A No, sir.

Q Were you perfectly conscious of everything that was going on? A Did I know everything going on inside?

Q Before you were struck? A Yes, sir.

Q Did this drink you had taken affect you in anyway?
A No, sir.

A JUROR: I would like to have answer that question "Why were you standing there"?

BY MR. BOSTWICK:

Q After you went out of the door why were you standing there rather than go home? A Well, I was making up my mind.

Q You were just thinking about it? A Yes, sir.

BY A JUROR:

Q Are you married? A No, sir.

Q Did you hear that remark passed "Come on out, I will lick you"? A No, sir; I didn't hear that.

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Q You didn't hear the remark passed by somebody?

A No, sir.

BY MR. KIER:

Q Nobody threatened to lick you? A No, sir.

Q You didn't hear any remark passed at all? A No, sir; didn't hear any remark passed.

BY THE COURT:

Q Now this man from the Hungarian Society up above who told Lang and Schmidt to go out?

MR. BOSTWICK: Lang was put out and Schmidt was told to go out.

BY THE COURT:

Q The man from this society up above where the dance was did you hear him say anything to Lang or Schmidt?

A No, sir; I did not.

Q You did not hear that? A No, sir.

Q Did you hear either Lang or Schmidt go to the door and ~~the~~ demand that somebody should come out, they wanted to lick them? A No, sir.

Q You didn't hear that? A No, sir.

BY THE FOURTH JUROR:

Q When you stepped outside the door did you stand in the doorway or up against the side of the building?

A Outside the door.

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Q Did you stand in the doorway, up against the door-jamb or stand in one side? A On one side of the door.

Q Leaning up against the side of the house? A Yes, sir.

Q Was it ~~open~~ in the open yard? A Open areaway.

Q An areaway? A Yes, sir.

Q How far was the other fence from there where you were standing in the areaway? A (No answer).

BY THE COURT:

Q This areaway was how long, was it a long areaway?

A Well, I couldn't tell you.

Q You couldn't tell us? A No, sir.

Q Had you ever been there before? A No, sir; the first time I was over there.

BY THE FOURTH JUROR:

Q You knew it was an areaway? A Yes, sir.

Q Were there two ways to get out of there or only one?

A Only one entrance.

Q You could see the exit, could you, from where you were standing? A I could see what?

Q The entrance, you could see the entrance to this place coming in -- to go out? A Yes, sir.

Q From where you were standing? A Yes, sir.

THE COURT: This case will have to go over

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until to-morrow in a few minutes, but I would like to have a general idea of what this areaway or yard was. I would like to know how wide it was and I think probably the proprietor could give us that information and probably by to-morrow morning he could give us a little diagram, approximately. That is all you want.

BY THE FIFTH JUROR:

Q Do you remember where you were standing at the time you were hit? A (No answer).

Q Were were you standing and how were you standing at the time you were hit? A Standing by the door.

BY THE COURT:

Q Which door, were you facing the door or facing the building, were you standing with your back towards the door?

A Back towards the door.

Q You were standing with your back towards the door?

A Yes, sir.

Q What door was that, how many doors were there there?

A Only one door.

Q That led out into the yard? A Yes, sir.

Q Then you tell the jury you were standing with your back towards the saloon when you were struck? A Towards the door.

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Q The door was towards the saloon, wasn't it?

A Well, towards the --

Q The question is was your back turned towards, a little turned towards the saloon? A The entrance to the dance hall.

Q The entrance to the dance hall? A Yes, sir.

Q All right. Was your back turned towards the dance hall at the time you were struck? A Yes, sir.

Q Now, you were struck on the left side? A Yes, sir.

Q Weren't you? A Yes, sir.

Q Very well. Now, where was that left side of your head, what direction was that in at the time you were struck?

A Well, I was standing this way (illustrating).

THE COURT: Without a diagram it is pretty hard for us to tell.

BY MR. BOSTWICK:

Q Were you facing the sidewalk when you were struck?

A Facing the sidewalk.

THE COURT: There is a room, I assume, in the rear of the building or saloon, or whatever it was.

MR. BOSTWICK: There is a sort of a glass enclosure, in other words, a sort of a piazza enclosed which leads out to the yard.

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THE COURT: I thought it was a regular areaway.
This was on the ground floor?

MR. BOSTWICK: Yes, sir, on the street level.

BY THE COURT:

Q Were you on the street level? A Yes, sir.

BY A JUROR:

Q While standing there for five minutes to the best of your recollection, before you were hit, you don't know of anybody that approached you at all? A No, sir.

Q You didn't see anybody? A No, sir; I was hit.

Q Before you were hit you stood there for five minutes?

A Yes, sir.

Q Thinking it over? A Yes, sir.

Q During that time ^{you} didn't see anybody and no one spoke to you? A No, sir.

Q You don't know that you saw anybody at all?

A No, sir.

BY THE COURT:

Q Did you see the object that struck you? A No, sir; I do not.

THE COURT: Now, suppose we suspend until to-morrow and ask the proprietor of the saloon if he will give us a rough diagram of this place and let him explain it to us, or anybody else who will do it.

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It does not make any difference.

(The Court admonished the jury, calling their attention to Section 415 of the Code of Criminal Procedure and adjourned the further trial of the case until to-morrow, January 13, 1910, at 10.30 o'clock.)

New York, January 13, 1910.

TRIAL RESUMED.

T O N Y F R E Y, a witness called on behalf of the people,
being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BOSTWICK:

Q Where do you live? A 983 Jackson Avenue.

Q How old are you? A 21.

Q Do you remember the night of November 13th, last?

A Yes, sir.

Q Do you know Charles Schmidt, the defendant?

A Yes, sir.

Q Do you know Harry or Heinie Lang? A Yes, sir.

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Q Did you see them after midnight on the 13th or the morning of the 14th of November? A Yes, sir.

Q Where did you first see them? A 151st Street, corner of Cortlandt Avenue.

Q What time was that? A It was between 12 and one o'clock.

Q In what direction were they going? A Going west, corner of 151st Street.

Q How were they going? A In a lively manner.

Q Walking rapidly? A Walking rapidly.

Q Slowly or fast? A Fast.

Q Going through 151st Street? A Yes, sir.

Q Do you know where Protection Hall is? A Yes, sir.

Q Where is that? A 152nd Street and Cortlandt Avenue.

THE COURT: Now you have that diagram and if there is no objection the witnesses can testify from it so that the jurors may understand the location. It is roughly drawn, not by a technical hand but I think we can use it.

BY MR. BOSTWICK:

Q Now, you say you saw Schmidt and Lang on 151st Street?

A Yes, sir.

Q Going westerly? A Yes, sir; going westerly.

Q Between what avenues was that? A Going between Cortlandt and Morris Avenues.

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Q They were coming from Cortlandt Avenue? A Yes, sir.

Q Going towards Morris? A Yes, sir.

Q Morris Avenue is west of Cortlandt? A Yes, sir.

AUGUST WICKMAN, a witness called on behalf
of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BOSTWICK:

Q Are you connected with the detective bureau?

A Yes, sir; the Bronx branch.

Q Do you remember the morning of November 14th?

A I do.

Q Where did you go that morning? A I went over to
corner of 152nd Street and Cortlandt to investigate a robbery
of some man --

Q Did you go to a place known as Protection Hall?

A Yes, sir.

Q Did you examine the premises known as the yard
of that place or institution? A Yes, sir; I did.

Q I show you People's Exhibit 1 for identification
(referring to the diagram) and ask you whether the yard that
you speak of is on Cortlandt Avenue? A Yes, sir.

Q Is there a single gate to that yard on Cortlandt

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Avenue? A Yes, sir.

Q Is there a wall separating the yard from the sidewalk on Cortlandt Avenue? A A sort of a high fence.

Q With stairs up? A No stairs there.

Q Sure about that? A Yes, sir; I didn't see any stairs.

Q A high fence? A Yes, sir.

Q The yard is between 152nd Street on the one side and what street on the other? A 153rd Street.

Q On the other? A Yes, sir.

Q I point to a door on the diagram which leads into an areaway, and ask you if that is the only door which leads in from the yard? A Yes, sir; that is the only door from the yard into the areaway.

Q There is another door leading into the garden?
A I didn't examine that door; I didn't see that.

Q What did you find, if anything, in this yard, and where did you find it? A I found a rock lying there, and a couple of ash cans stood one side, and some blood on the pavement there outside of the door, about three feet away from the door.

Q About three feet away from the door? A Yes, sir.

Q What did you do with the rock? A Well, I took possession of it from Mr. Zacharowsky, he found it first and

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handed it to me when I got there this is the rock. (Producing a stone).

Q Was there anything on the stone when you found it?

A No, sir; there was no blood on it. This man had a cap on.

MR. KIER: Objected to. I object to the stone being put in evidence.

Q Were there any other stones loose in close proximity to the door which I have just indicated? A No, sir.

THE COURT: None that you saw?

THE WITNESS: I looked all around for it was a small yard.

BY MR. BOSTWICK:

Q You were there for the purpose of making an investigation? A Yes, sir.

Q This was the only loose stone you found? A The only one there.

BY THE COURT:

Q That was the only loose stone you found in the yard?

A Yes, sir; it is a blue stone yard and there were blue stone flags.

Q Were there any blood stains that you could see anywhere in the yard? A I think there were blood-stains on the flagging, I examined them, ~~and~~ there were blood stains on the flagging.

Q Were those blood stains found anywhere near -- you

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don't know that fact? A No, sir. Zacharowsky handed me the stone.

Q Did you arrest the defendant in this case? A Yes, sir; I did.

BY MR. BOSTWICK:

Q When? A It was on the evening of December 1st, 1909.

Q Where did you take him? A I took him over to the detective bureau.

Q Did you arrest the other defendant in this case?
A Officer Wagner arrested the other defendant the evening previous.

CROSS EXAMINATION BY MR. KEIR:

Q Mr. Wickman, you are sure, firstly -- what time did you get there, what time at night? A Well, it was maybe five minutes after one or ten after one when I was notified to go, and I got there probably about a quarter or 20 minutes after one-- when I got there.

Q Of course that yard is pretty there, there are no lights there? A Well, when you open that door, that door that leads from the areaway out to the yard there is light right there, underneath the ceiling, and immediately you open that door you can see everything over the yard.

Q That is a small door, that is a double door, isn't

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it? A No, sir, there is a single door right over there, that is the only door leads to that yard.

Q You mean to tell me that the door leading from that areaway out to the yard is a single door and not a double door?

A Yes, sir; a single door.

Q Not a double door? A Yes, sir.

Q Now, I want to ask you something else. Do you mean to tell me that there is not on the front of this yard on Cortlandt Avenue -- that there is not steps, wooden steps, going up to the second floor. Do you mean to say there is not?

A (No answer).

Q You have said there are no wooden steps going up above on Cortlandt Avenue? A May be on the side of the house but not over that fence.

Q I mean from here (indicating) right over the fence and going up from here up the entire length, up to the second floor, do you mean to say there were no steps? A That is for Mr. Zacharowsky to say, there is a high fence.

Q Was there a pair of stairs leading over the fence?

A (No answer).

Q When you first took the stand you said there were no stairs going up, do you know whether there are any on the front of that wall -- did you, yes or no? A I said there is no steps over that high fence.

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Q You persist in saying that there are no steps going up to the second part, are there steps in front on Cortlandt Avenue, in front of that yard? A The only steps I saw was up against the house, not over the fence.

Q Not over the fence? A No, sir.

Q You don't remember seeing anything of the kind?

A No, sir; there were no steps over the fence.

Q Did you make any kind of a search there on that front part -- you mean to say you searched the whole yard and didn't see those steps if they are there? A There is no steps there.

Q Now, then, the yard is a pretty long yard, it is 25 feet 10 inches here? A It was one o'clock at night when I went there.

Q It was night that you went there? A Yes, sir.

Q You didn't have any light with you to search for anything? A I had a candle and searched all over the yard, even in the garden I searched around.

Q You didn't tell us about the candle before? A No, sir; you didn't ask it; I am telling you now. I had a box of matches and I went in the garden and all over that place.

Q And there is no steps over that fence?

THE COURT: He says he never saw them.

Q Now, Mr. Officer, this was November 13th last?

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A It was on the 14th, it was after 12 o'clock on the morning of the 14th.

Q You didn't arrest this boy until when? A On December 1st.

Q About two weeks after? A Yes, sir.

Q During all this time this boy stayed at his place, didn't leave his home, where is his home? A On Courtland Avenue.

Q You know where his home is? A Yes, sir.

THE COURT: Now ask him if he knows whether the boy stated at his home?

BY MR. KIER:

Q How many times during the two weeks from this occurrence, November 14th, until you arrested him about December 1st, how many times did you visit this boy's home and see him there?

A I saw him there twice in his home.

Q Didn't you go up seven or eight times? A No, sir; twice I was over there that is when I was there, three times, I saw his mother the first time I was there, he wasn't home when I went there.

Q You saw him on two occasions? A Yes, sir; I saw his mother first.

Q On neither of these two occasions you arrested him?
A No, sir; I did not.

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Q You talked to him, didn't you, told this boy that it wasn't him who did it, or Lang who did, but you believed the bartender did it? A I said I want to find out who done it, I didn't know who done it, I was ^{not} there.

Q Did you say that the bartender did it? A No, sir, I didn't say any such thing. I wanted to find out if the bartender did it.

Q As a fact, do you know who did it? A No, sir.

THE COURT: He does not pretend to know.

Q He suggested the bartender?

THE COURT: It wouldn't make any difference if he did. He was not there. He didn't come for an hour afterwards.

Q Didn't you say positively to the mother that the bartender did it? A No, sir;,, I did not.

BY MR. BOSTWICK:

Q This is the same stone that Mr. Zacharowsky handed to you? A Yes, sir; it has been in my possession.

J O S E P H Z A C H A R O W S K Y, a witness recalled on behalf of the People:

BY MR. BOSTWICK:

Q Mr. Zacharowsky, did you make this diagram of your place and premises? A Yes, sir.

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Q We wish to thank you for it. That there is 152nd Street, indicating the part marked as 152nd Street on People's Exhibit No. 1 for identification. The garden is north, is it not? A Yes, sir.

Q 153rd Street would be here (indicating)? A Yes, sir.

Q Indicating the yard or garden? A The whole space takes 75 feet front from 152nd Street way, one-third of the block.

Q From 152nd Street to the north line of the garden is about 75 feet? A Yes, sir.

Q Is the door leading from the areaway into the yard the door concerning which you testified on your main examination? A Yes, sir.

Q Is this the door (indicating)? A Yes, sir, at that door, but we don't open that door, that door is stationary.

Q A double door? A It is a double door.

Q This is a single door? A Yes, sir; we only use that one door, we only use one part of it.

Q Is there a wall here or a fence (indicating)? A A fence.

Q Now, did you ever see this stone before? A Yes, sir.

MR. BOSTWICK: I ask that it be marked for identification.

(The stone referred to is marked people's

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Exhibit No. 2 for identification).

Q When did you find that stone? A On the morning of the 14th we was anxious --

Q Don't say that. Tell what you did? A It was handed to me by one of my employees who was helping me out that night, with the statement that he found it in the yard.

Q What did you do with it? A I took it and put it in my drawer.

Q What was the name of the employee that handed it to you? A Jacob Albrecht.

Q Jacob Albrecht? A Yes, sir.

BY MR. KIER:

Q What time did he hand it to you in the morning?

A When I got up.

Q About seven or eight o'clock? A No, sir; I generally get up about 10 o'clock.

Q About 10 o'clock? A Yes, sir.

Q You were handed ^{that} stone? A Yes, sir.

Q Now, Mr. Zacharowsky, in this yard here there are steps going up over that fence to the second floor?

A No, sir, not over the fence.

Q Along the fence there is? A Right around here in front (illustrating).

Q Where do they begin? A They begin here inside the

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door or entrance and they lead to the private apartments.

Q Go up to the second floor? A Yes, sir; not as far as that.

Q Half way? A About the distance of 10 feet from the house.

Q Go up over the fence to the house? A It reaches over the fence.

BY THE COURT:

Q Is that yard approximately 25 feet 10 inches long about? A I can remember 12 feet, yes, sir, according to my measurements about 12 feet wide, about 25 feet 10 inches deep.

Q Approximately? A Yes, sir.

Q That diagram has drawn is approximately correct?

A Yes, sir.

BY MR. BOSTWICK:

Q Will you indicate with this pencil on this diagram, marked Exhibit 1 for identification, by the letter A, the door which you described when you said that it was three-quarters shut. Will you indicate on that diagram by a cross the place where Platt was found first after the injury had been inflicted?

A (Witness indicates).

Q Will you indicate by the letter B the stairs where the people were supposed to come down or did come down from

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the Bavarian Association dance? A (Witness marks B).

Q Will you indicate by the letter C the gate that you testified Lang and Schmidt were running for when you saw out of the door A? A (Witness marks with C).

Q Immediately after you heard the crash? A (Witness indicates).

Q That was a double door not a single door?

THE COURT: Yes, he said it was a double door but used as a single door.

J A C O B A L B R E C H T, a witness for the People,
recalled:

BY MR. BOSTWICK:

Q Did you ever see this stone before? A Not until the day I picked it up.

Q I mean before now? A Yes, sir.

Q Tell us where you found that stone and when you found it? A Well, I found it the same morning of the accident about, I guess about a quarter of nine in the morning when I came out, I found it -- I don't know how many feet it was lying in the corner just opposite where Platt was hit, when I went out that morning. I picked ~~up~~ that stone up in the corner of

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the yard about five feet from where I picked Platt up, where he was lying.

Q In the corner? A Yes, sir.

Q What did you do with it? A I took it inside, and I gave it to Joe and Joe put it in the drawer.

Q That was nine o'clock? A Yes, sir.

Q I show you People's Exhibit 1 marked for identification and ask you to indicate by a small circle the place where you found that stone. This is the door leading out of the hallway and this is the gate leading out to Courtland Avenue?

A Here is where Platt was hit (marking).

Q Indicate by a mark like this, double cross, where Platt was hit? A (Witness indicates).

Q Were there any other loose stones in that vicinity?

A No, sir, not that I seen.

Q Did you see any blood stains on the pavement?

A On the pavement, yes, sir, blood stains on my other coat where I picked him up.

Q This was found, the stone, nearest to the place where Platt was hit?

MR. KIER: Objected to.

MR. BOSTWICK: He says there was no other stone there.

Q You found that stone about five feet from where you say you found Platt? A Yes, sir.

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Q You handed this to Mr. Joseph Zacharowsky? A Yes, sir.

BY THE COURT:

Q At nine o'clock the next morning? A Yes, sir.

Q Did you have any conversation with either Lang or Schmidt? A No, sir.

Q After this accident happened? A No, sir, I hadn't seen them, only just in the station house, in the magistrate's court, but haven't spoken to them.

Q No conversation with them at all? A No, sir.

Q You were the first man to reach Platt and give him assistance, were you? A Yes, sir.

Q You raised him up? A Yes, sir.

Q From the ground? A Yes, sir.

Q Who was the second man to come out? A Well, at alone the time that I picked him up, I picked him up and Mr. Huckle he wanted to help me.

Q Huckle whose real name is Byrne? A Yes, sir.

Q Byrne? A Yes, sir. He wanted to help me and I told him no, he should go home and he did, he went away, he went home and I picked him up.

Q Why didn't you want Huckle or Byrne to help you?

A Well, I didn't want a crowd around, I wanted to attend to him myself.

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Q Why didn't you want a crowd around, why did you want to attend to him yourself? A Because, I don't know, the way I came out, I says, "Come on home, get out of here". Those were just the words I used, not meaning anything by it.

BY THE SEVENTH JUROR:

Q How long was there between the time you heard the crash and the time you picked Platt up? A I should say it was a second.

BY THE COURT:

Q Now, just before you picked him up -- A No more than the crash was --

QC Just before you picked him up and immediately after you heard the crash did you see anybody besides Platt? A Yes, sir.

Mr.

Q Who did you see? A I seen Schmidt and Mr. Lang.

Q Where were they, what were they doing? A They were running for the door, going out the door to Courtland Avenue.

Q Running out of the hall? A Out of the areaway where Platt was hit.

Q Were they in the same areaway or the yard? A This is the yard (illustrating).

Q What we have been calling the yard you call the areaway?

A Yes, sir; it is a yard.

Q They were running in which direction, towards Platt or

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just in a contrary direction? A Away from Platt.

Q Did either of them say anything when they were running?

A They did not.

Q Any sound at all? A No, sir; I didn't hear them say anything.

Q How often had you seen Schmidt before that night?

A I seen him once or twice.

Q Twice before that? A Yes, sir; seen him at 12 o'clock and seen him at the time when this accident occurred when the man was put out, and seen him out in the yard, three times that night.

Q When who was put out? A Mr. Lang.

Q You saw him when Lang was put out? A Yes, sir.

Q Now, who put Lang out? A I don't know that man's name, he came from Jersey some place.

Q Who ordered Lang out? A One of the committee of the dance upstairs.

Q Of this Hungarian dance? A A German dance, I believe it was.

Q Bavarian? A Yes, sir.

BY THE 12TH JUROR:

Q When you found that this man was injured did you find any disarrangement of his clothing where his money was supposed to have been? A No, sir; I didn't look for anything like that.

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Q Were his pockets turned inside out? A No, sir; I didn't take notice to anything but his head, I laid him down and didn't touch him until the ambulance came.

BY A JUROR:

Q How is that yard illuminated? A There is no lights at all.

Q You saw some people run? A Yes, sir.

Q Sure you could identify the people who ran?

A Yes, sir.

BY MR. BOSTWICK:

Q When the door that led from the areaway into the yard was open did any light come out of that door into the yard?

A Yes, sir; it shows for about half way in the yard when the door is open.

BY THE COURT:

Q Any windows opening on the yard or from the ball room, or from any other part of the building? A Well, that is a good distance away. There is a window where the hat check is, and there is another shed, it is covered.

Q You are the bartender there? A No, sir.

Q Who is the bartender? A A party named John Meckle.

Q Was he there that night? A No, sir, he wasn't there that night.

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Q Was he in the hotel? A No, sir.

Q They had no bartender at all that night?

A Mr. Eckert.

Q Was he in the areaway that night? A No, sir.

Q Not at all? A No, sir.

Q He didn't even go to see what happened?

A No, sir, never left the barroom.

BY MR. KIER:

Q Mr. Joe was there? A Yes, sir.

Q And Huckle or Byrne was there? A Yes, sir.

Q When you picked him up? A Yes, sir.

Q When you said only these two men were there you don't mean that, you mean these other people were there with you?

A Huckle only run into the yard, I only seen Schmidt and Lang run out of the yard and Huckle was standing in front of me, the door was almost shut on Huckle.

Q How many people were upstairs that night?

A About 75 or 80.

Q Nothing prevented the people from going in and out and around there? A At that time there was nobody going out because I was standing in the hall at that time.

Q This place is connected with upstairs, people were coming downstairs from upstairs? A Yes, sir.

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Q Now these marks you see here indicate those steps from upstairs? A Yes, sir.

Q The crowd was upstairs having a dance? A Yes, sir.

Q This is the kitchen? A Yes, sir.

Q Leading upstairs, do you see that marked B?

A Yes, sir.

Q You see what looks like steps? A Yes, sir.

Q This is the areaway, is it, where the marks are like steps? A This is the partition of the stairs, on the inside, you have to go through two doors to get to the stairs to go upstairs.

Q At the end of the stairs is the door leading into this area? A Into the areaway and then from the alley into the yard.

Q These stairs going upstairs, and this was a door leading right into this areaway. You see that areaway? A Into the yard.

Q No. A Into the areaway.

Q That is about 50 feet, you come to the door of the areaway leading into the yard? A Yes, sir.

Q There were a number of people in this dining room at that time? A Yes, sir.

Q There was no way of preventing as many as wanted to passing out and into this areaway into the yard and into the

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bar and into the sitting room there, they are all connected with doors, are they not? A Yes, sir.

Q All open doors? A Yes, sir.

Q And any one, two or three or four or a dozen people could have passed in and out during that night? A That night they did, but not at that time, because I was standing there.

Q They could pass through there at that time?

A (No answer).

Q About that time? A Yes, sir; they could.

Q What was your business that night? A I was just helping Joe out.

Q Were you in the dining room? A No, sir.

Q Where were you helping him, what work were you doing?

I was
A Upstairs in the hat checking and all around.

Q You were of course busy engaged because 75 people were there, you were very busy, is that right? A No, sir; that didn't make me so busy.

Q You were busy all that time? A No, sir; not busy all that time, I should judge I done about two hours work out of the four.

Q Attending to checks, what else were your duties?

A That was all, just standing ~~just~~ around, just to see what was needed.

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Q Attending to the wants of those 75 people?

A No, sir.

Q To as many as wanted to be attended to? A Yes, sir.

BY THE COURT:

Q In regard to the Bavarian who ordered Lang out of the place, how long after that was it that you heard this crash and went out, went to Phatt's assistance? A About 10 minutes.

Q About 10 minutes after that? A Yes, sir.

Q And the Bavarian, what became of him? A He went upstairs and came back again, he went upstairs and I didn't see him any more.

Q He went upstairs with the Bavarian society ?

A Yes, sir.

BY A JUROR:

Q After you heard the crash were you the first one out of the door into the yard? A Yes, sir.

Q Was there any one else in the yard when you got out there besides those two men running out? A Yes, sir; there was Huckle, he was standing in front of me.

Q He was outside also? A Yes, sir.

Q He was in the yard at the time of this crash?

A Yes, sir.

BY THE COURT:

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Q When you got into the yard was Huckle standing there?

A Yes, sir; Huckle, Byrne, stood -- this is the door, the door is closed, and Byrne stood right there so that the door could not close (illustrating).

Q He was standing in the door? A Yes, sir; he was half out; he was talking to me, he had his face to me, face to face, about from where I am sitting now to about there he stood (indicating)..

Q Byrne had his back to the yard? A To the street.

Q Byrne was not out of your sight at the time of the crash? A (No answer).

BY MR. BOSTWICK:

Q Now, at the time that this blow was heard was Byrne in your view or was he not in your view? A He was in my view.

BY THE COURT:

Q Now, how far were you standing from Byrne at the time you heard the crash? A I should say about half a foot.

Q You stated, I think -- did you state that you were standing face to face with Byrne? A Yes, sir.

Q Talking to him? A Yes, sir.

Q Now, were you facing the yard at that time or was Byrne facing the yard? A I was talking, I was facing to the yard, I was facing to the yard.

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BY MR. BOSTWICK:

Q There was no one else in the yard -- was there any one else in the yard other than Schmidt and Lang?

A Only Mr. Platt.

BY MR. KIER:

Q You didn't make a special examination at the time of the yard, you were not looking for anybody in the yard?

A No, sir; they came to me and asked me to send him out.

Q Now, Mr. Albrecht, at the time of this occurrence when you heard the crash, and when you went out to the man you were not interested in looking in that good sized yard to see if there was anybody else around there, you were interested in the man, to take care of him, were you not?

MR. BOSTWICK: I object to that.

THE COURT: Strike it out.

MR. KIER: I will ask it in this way.

Q When you went to pick Platt up after the crash did you look around the yard to see if anybody was there, or did you look at Platt, the man you were picking up? A No, sir; I didn't know he was hit; I didn't know Platt was hit; didn't know anybody was hit. When I heard the crash the door was fired open, and I saw they made a rush for the street, Schmidt and Lang went out, and as they did I stumbled over Platt's foot. I picked him up first, attended to him first,

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I went out after then to see if I could see either one of them, find out what they done, I haven't seen them since until the magistrate's court.

Q Wasn't this boy pretty sick at the time?

A Yes, sir.

Q Schmidt? A Yes, sir.

Q Had been vomiting inside and you had helped him out, didn't you? A No, sir; I tapped him on the shoulder and he walked out.

Q Didn't you help him out a little bit, didn't you tell me you helped him out? A Caught him by the arm and took him over to the door, he walked out himself.

Q You did have to put your hand on him? A I didn't have to.

Q You did it? A Yes, sir; helped him out and asked him to go out.

Q This man you put your hand on was sick there you say?

A Yes, sir.

Q He was vomiting there? A Yes, sir; that was 10 minutes afterwards when he ran.

MR. BOSTWICK: I now offer this diagram in evidence.

MR. KIER: Objected to because it wasn't made by the proper person.

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THE COURT: The proprietor says that he measured the place but he does not pretend that it is made with the exactitude of a surveyor's measurements or an architect's diagram. This is not a motion involving real estate. It is simply to give the jury a general idea of the position of things there and I think it quite proper to have it marked in evidence.

(Received in evidence and marked People's Exhibit 1).

MR. KIER: I take an exception to your Honor's ruling.

MR. BOSTWICK: Now I offer in evidence the exhibit now marked No. 2 for identification, the stone.

MR. KIER: I object to that. The stone was found in the yard at nine o'clock, a very long time after this accident happened.

THE COURT: Your objection is that it is too remote?

MR. KIER: No connection whatever shown between that stone and the defendants.

THE COURT: I shall admit. The fact that it wasn't found until nine o'clock the following

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morning and that the alleged assault was committed earlier in the morning can be used by you as an argument.

(Marked People's Exhibit 2).

MR. KIER: I take an exception.

BY THE FIFTH JUROR:

Q Did you look for the stone right after you picked up Platt? A No, sir.

Q When did you look for the stone? A I didn't look for the stone, I didn't know what I was going to find. The next morning when I came up I said "I wonder what it was". I looked and picked up that stone, it was the only thing lying in the yard.

BY MR. KIER:

Q Did you ever have any hard words with Schmidt or Lang? A No, sir.

Q Before that night? A No, sir.

MR. BOSTWICK: The People rest.

MR. KIER: I have a motion.

THE COURT: So far as the first count in the indictment is concerned I shall have to take that away from the consideration of the jury. The first count of the indictment charges robbery and I shall

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have to take that away from the consideration of the jury because there is no evidence to connect this defendant with any robbery. It is true that the loss of money has been proven but there ^{does} not seem to have been any exclusive opportunity on the part of the defendant for the perpetration of that crime.

Now, in regard to the second count of the indictment, grand larceny in the second degree, for the same reason that will have to be withdrawn from the consideration of the jury.

The third count in the indictment upon the same state of facts, assault in the second degree, will remain.

The fourth count of the indictment is withdrawn from the consideration of the jury. In other words, this case must now be tried upon the theory of assault. The theory of robbery must be withdrawn from the consideration of the jury.

The third count in the indictment alone stands. Is that your motion?

MR. KIER: I have a further motion, your Honor. As I understand, your Honor, robbery in the first degree and grand larceny in the first degree and receiving have all been withdrawn from the considera-

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tion of the jury.

THE COURT: Yes.

MR. KIER: And your Honor has decided --

THE COURT: To let the case go to the jury on the question of assault in the second degree.

MR. KIER: Now, as to that, your Honor, I object, and ask that your Honor dismiss that count of assault in the second degree for the reason that the People have failed to show by evidence that the defendant has committed that offense or any other offense against the laws of the State of New York.

I might further say that the testimony is so indefinite -- it is not precise, it points to nobody particularly, and it is a matter of guesswork and speculation, and ^{as} a matter of law the burden being upon the People to prove their case, and the presumption of innocence remaining with the defendant until the People have proven their case, I hold that the People have not definitely shown any guilt whatever as to this defendant in relation to this charge or any other charge.

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THE COURT: Now, so far as the assault is concerned if I recall the evidence it is, in substance, to this effect: That both the proprietor, Joseph, whose name I cannot pronounce, the proprietor and Albrecht and also Byrne --- the three of them --- heard a crash, heard the impact of a blow. Practically the three of them went out almost simultaneously into the yard where they heard the crash of a blow and the three of them, as I understand it, saw Platt lying there, one of them tripped over his foot, Albrecht tripped over his foot and then saw this defendant, together with another defendant Lang, who has demanded a separate trial, fleeing from the yard. In other words there is the element of an assault by someone and the flight of the two defendants and nobody else in the yard, the yard only being 25 feet long and about 12 feet wide. So quick were they in perceiving what happened that the defendants did not even have an opportunity of traversing the 25 feet of territory before they were observed. Now then we have the assault and flight within a space of a few seconds.

MR. KIER: I will answer that. As far as the law is concerned, of course, I don't admit that there was flight. The witnesses say that the door was half open

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and they could see half the yard. The front gate was open. They could not see the other half of the yard. Suppose it is as your Honor says and that the witness is right, though we don't admit it, that they were going out ---

THE COURT: I do not say that they were right. I have not the power to say that any witness is right.

MR. KIER: But suppose the testimony is that they were going out, that is a circumstance in relation to the proving of an offense. That is a mere circumstance and it might be said that it is a circumstance against the defendant, but it is not a circumstance to prove that the defendant did the striking. Secondly it is no proof at all that they had anything to do with the striking. They might have seen the trouble and run away from the trouble. An innocent man might run away from trouble. Where a man sees trouble in a saloon he might want to get away from it. Lots of people run away from trouble. When a man sees trouble he doesn't want to get mixed up in it in any way.

THE COURT: Flight is some evidence of guilt if the jury decide to view it in that light.

MR. KIER: With other facts, but alone, your Honor, alone it is nothing. As a matter of law alone

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it is not evidence of anything.

THE COURT: But there is something else in this case.

MR. KIER: No motive or anything else. Platt said there were no words between them.

THE COURT: Motive is never necessary to prove a crime. A man may do a thing just as that man did that I have just sentenced, cut a man with a razor without any motive at all. Just go right up to a man and cut him without any motive. He had no motive for it whatever. Now does that lessen the crime in any respect?

MR. KIER: No, sir, I don't mean that.

THE COURT: But motive is very strong ; sometimes it has very great probative force, if you can prove motive. Now assume in this case that these people had no motive for striking Platt, had no motive in it, but that they did have a motive for striking somebody else, namely the Bavarian who had ordered they them out and/supposed that this man Platt was the Bavarian.

MR. KIER: According to the testimony the Bavarian was upstairs.

THE COURT: Suppose that they didn't know Platt,

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suppose they didn't know him, and suppose the jury choose to believe that they thought this man Platt was the Bavarian, what difference does it make?

MR. KIER: As a matter of law you cannot very well speculate on these matters. The District Attorney is compelled to produce definite evidence.

THE COURT: They may or may not have thought that Platt was the Bavarian; that does not make any difference. If a man shoots A, thinking A is B, he is guilty of just the same crime as if he struck B. Both are human beings and both are protected by the law.

MR. KIER: There is no evidence to show who struck him.

THE COURT: The jury were not there and I was not there.

MR. KIER: He might have been struck from outside, he might have dropped on his head.

THE COURT: We will let the jury decide that.

MR. KIER: Your Honor denies the motion?

THE COURT: Motion denied.

MR. KIER: I take an exception.

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D E F E N S E .

LOUIS MITCHELL, a witness called on behalf of the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. KIER:

Q Where do you live? A 531 Cortlandt Avenue.

Q You are retired? A Yes, sir.

Q How long have you known this defendant, this boy Schmidt? A Well, for the last eight years.

Q Eight years? A Yes, sir.

Q Do you know other people that know him? A Yes, sir.

Q How long have you lived in the same house with this boy?

A Four or five years.

Q Over five years? A Yes, sir.

Q You say you know other people who know him in the neighborhood? A Yes, sir.

Q What is his reputation for peace, quiet and good order, good or bad? A He is a good honest man, he works all the time.

Q Is he a peaceable boy? A Yes, sir.

BY THE COURT:

Q Do you know anything about his reputation for peace and quiet after he has been drinking? A He always was nice and quiet; he never drinks.

Q He never drinks? A No, sir.

THE COURT: Isn't the evidence in this case that

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he had been drinking so much that he was vomitting?

MR. KIER: He had been drinking that night.

BY THE COURT:

Q Did you ever see him drink? A No, sir, never seen him.

Q Did you ever see him come home drunk? A No, sir.

BY MR. KIER:

Q Do you live in the same house with him? A Yes, sir.

BY THE COURT:

Q You don't go around with him, you don't know whether he drinks or not? A No, sir, never.

Q You don't know whether he drinks or not? A No, sir.

Q Now, the evidence in this case, up to date, is that he, on this particular night, went from one barroom to another drinking. Now, do you know anything about that? A No, sir; I never see him there.

Q Does his reputation in the community, as far as you know it, coincide with that? A I never seen him go into a saloon; he is working all the time.

BY MR. KIER:

Q Did you ever hear anybody in the neighborhood, in the community there, say a word against this boy's character? A No, sir.

MR. BOSTWICK: I object to that.

MR. KIER: I can prove that his reputation has

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never been questioned for peace and quiet. I asked him what is this defendant's reputation for peace and quiet. That is a plain question.

MR. BOSTWICK: I object to that.

THE COURT: So far as you know.

BY MR. KIER:

Q Was it ever questioned? A All the time he was a nice good young man.

BY MR. BOSTWICK:

Q What is your business? A I am retired now from business.

Q You have retired? A Yes, sir.

Q About what time in the morning are you about? A Well, how do you mean?

Q When do you get up, Mr. Mitchell, do you sleep late?

A No, sir, I get up at seven o'clock in the morning.

Q When do you go to bed at night? A I go to bed at ten o'clock and the house is closed.

BY THE COURT:

Q How about the defendant Schmidt, when does he go to bed, if you know? A I hear him going up to bed at nine o'clock, sometimes half past nine the latest.

Q You hear him going upstairs at nine to half past nine at night? A Yes, sir.

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BY MR. BOSTWICK:

Q Now have you ever been out with this boy Charles Schmidt?

A No, sir, never.

Q You have no knowledge of what he does when he is out, have you? A Well, I seen him going around as a nice young man, that is all what I seen, seen him many times.

Q What does he work at? A Well, he works as a tinsmith, I think.

Q Where does he work? A On Cortlandt Avenue.

Q What is that? A Cortlandt Avenue.

Q He works at Cortlandt Avenue? A Yes, sir.

Q What? A As tinsmith and roofer.

Q Cortlandt Avenue and what street? A 151st and 152nd Street; he was working there over two years.

Q Between 151st and 153rd Street on Cortlandt Avenue?

A Yes, sir.

Q As a tinsmith? A Yes, sir.

Q For whom? A Mr. Mason.

Q Mr. Mason? A Yes, sir.

BY THE COURT:

Q Spell it if you will, Mason, M-a-s-o-n? A Yes, sir; it sounds like that.

Q Mason? A Yes, sir.

BY MR. BOSTWICK:

Q I want to ask you with whom have you had conversations

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about this Charles Schmidt? A I ain't got any conversations about him.

Q I can't hear you, sir, a little louder. The last juror wants to hear you too. Who have you spoken to, Mr. Mitchell, in regard to the character of the defendant, Charles Schmidt? A Nobody.

Q Nobody? A No, sir.

Q How do you know what his reputation is? A Well, I seen him every day, what he is doing, I only saw that he is an honest nice young man.

Q Your opinion of him and your judgment as to his character is based upon the fact that you have seen him about and he hasn't been doing anything wrong in your presence? A He never does anything wrong so much as I know.

Q Did you know that he had been in bad company at all?

A I never seen that.

Q You go to bed early, don't you? A Sometimes 10 or 11.

Q You don't know what he is doing at 12 or one o'clock in the morning, do you? A I ain't seen him coming home at that time.

Q If you knew that he had been visiting saloons at night and was in company with bad people would you still say that you thought he had a good character and reputation in the community? A I never seen him coming home or heard he went in a saloon.

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Q If you found out that he had been visiting saloons at 12 or one o'clock in the morning in bad company would you still say that he had a good reputation in the community? A No, sir, if I seen that I would not say that.

Q If I understand you you have not learned from anybody what his reputation is? A No, sir.

Q But it is a judgment based on your own observation, is that correct? A I don't know.

Q You come to the conclusion that he has a good reputation because of your own knowledge of him? A He got a good reputation.

Q But not from any other source? A No, sir.

MR. BOSTWICK: I move that the testimony of the witness be stricken from the record.

THE COURT: Strictly speaking you are correct, but I will let it stand for what it is worth.

J O H N P . R A S C H , a witness called on behalf of the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. KIER:

Q Mr. Rasch, where do you live? A 524 Cortlandt Avenue.

Q Mr. Rasch, your business is saloon keeper? A Yes, sir.

Q Have you known this boy for a long while? A I have known Charles Schmidt for the last three and one-half years.

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Q Is he in your neighborhood? A Yes, sir, he is right across the way from me, 531.

Q Do you know other people that know him in the neighborhood? A Yes, sir, quite some around the neighborhood that know him.

Q A great many people? A Yes, sir.

Q Is his reputation for peace and quiet in the neighborhood good or bad? A It is good.

MR. BOSTWICK: No cross examination.

J A C O B C H R I S T O P H E R , a witness called on behalf of the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. KIER:

Q Where do you live? A 574 Cortlandt Avenue.

Q Do you know the defendant? A Yes, sir.

Q Charles Schmidt? A Yes, sir.

Q What is your business? A Butcher.

Q How long have you known Schmidt? A About 13 years or

14.

Q 13 years? A 12 to 13.

Q Do you know other people that know him? A Yes, sir.

Q Is his reputation for peace and quiet good or bad?

A It is as much as I know, it is very good; to my knowledge it was always very good.

MR. BOSTWICK: No questions.

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CHARLES SCHMIDT, the defendant, being duly sworn in his own behalf, testified as follows:

DIRECT EXAMINATION BY MR. XIER:

Q Where do you live? A 531 Cortlandt Avenue.

Q How old are you? A Nineteen.

Q You were born where? A U. S.

Q I mean you were born in -- A Long Island.

Q Where is that? A Long Island.

Q How long have you --- where do you live now? A 531 Cortlandt Avenue.

Q That is how far from this saloon, Protection Hall?

A Well, about three blocks.

Q How long have you lived there? A Well, about --- I am living now there about seven years.

Q About seven years? A Yes, sir.

Q Where did you live before that, in the same neighborhood? A Yes, sir, right around the neighborhood.

Q How many years have you been living right in the neighborhood where you are now? A About nine years.

Q Where did you live before that? A On Third Avenue.

Q So you have been living in New York how many years?

A About 18 years.

Q You came over from Long Island when you were a child?

A Yes, sir.

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Q You say you have been living nine years in this neighborhood where this occurred? A Yes, sir.

Q Now, at the time of this trouble, at the time of your arrest for whom were you working? A Ward & Gow.

Q What kind of work did you do? A Bill posting.

Q How long did you work for them? A About five months.

Q How much did you make a week? A Ten and a half dollars.

Q That was at the time of your arrest? A Yes, sir.

Q Now then, prior to that for whom did you work? A John F. Mason.

Q How long did you work for him? A About three years.

Q You have got a recommendation in your pocket? A Yes, sir.

Q Three years? A Yes, sir.

Q What did you do for him? A Tinsmith.

Q Were you a regular tinsmith? A Yes.

Q How much did you make with him? A \$12.

Q \$12? A Yes, sir.

Q Where have you always lived? A Well, in the Bronx.

Q With whom, with your mother? A Yes, sir, with my mother and father.

Q You live there yet? A Yes, sir.

Q Were you ever convicted of a crime? A Never.

Q Now, on this 13th day of November you left the house

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at about what time? A About half past seven.

Q About half past seven? A Yes, sir.

Q Where did you go? A Well, stood at the corner of 149th Street and Cortlandt Avenue, and I met a friend of mine named Lang and he invited me over to have a drink. I went over and we had a drink there.

Q Where, at what place? A Burkhart's Hotel, 149th Street and Cortlandt Avenue.

Q What happened there? A We had a drink and we met Platt and Byrne.

Q You met Byrne and Platt? A Yes, sir, I asked them to have a drink, which they did.

Q How long did you stay there? A Well, we just had one drink and they invited us over to Protection Hall, 152nd Street.

Q Who invited you, Byrne and Platt? A Byrne and Platt. We had a few drinks up there when Lang was ordered out of the place.

Q When you went to Protection Hall, that is where the trouble occurred? A Yes, sir.

Q You had a few drinks up there? A Yes, sir.

Q All together? A Myself, Lang, Byrne, Huckle and Platt.

Q Then after having a few drinks what happened? A Lang was told to go out.

Q By whom? A I cannot say.

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Q Well, what happened? A I was told to walk out, which I did.

Q By whom? A By Albrecht, he told me to walk out of the place.

Q Did he assist you out? A No, sir.

Q Put his hand on you? A He just raised me up off the chair.

Q Had you been sick there? A Yes, sir, I was sick.

Q Then what happened? A Well, I met Lang outside on the corner and he says "Come on, we will go home", which we did, and I left him at 149th Street and Cortlandt Avenue. He went to take the subway to the west side where he lived and I went direct home.

Q Where did you meet Lang, out where? A 149th Street.

BY THE COURT:

Q You met Lang outside? A Yes, sir.

Q On the street? A Yes, sir.

Q Or in the yard? A Outside on the street.

Q That is on 152nd Street? A Yes, sir, and Cortlandt Avenue.

Q Not in the yard? A No, sir.

Q Did you go through the yard? A Yes, sir, we had to go through the yard to go out.

BY MR. KIRK:

Q Go ahead. Weren't you there when there was trouble,

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when there was a fight or trouble of some kind? A Well, while I was walking out there was a fight with some Pollacks in the corner, in this alley way.

Q In the yard? A Yes, sir.

Q You saw some fight? A Yes, sir.

Q Who was engaged in it? A I can't say, it looked to be some Pollack.

Q Wasn't there a great many people around there? A Yes, sir.

Q How many did you see about? A I seen about ten.

Q Did you see any crowd inside? A There was crowds coming downstairs.

Q All during the evening? A Yes, sir.

Q How long were you there? A I was there about an hour and a half.

Q During that time were there many people coming in, coming downstairs? A Yes, sir.

Q Going out through the yard? A Yes, sir.

Q Were there many people around there? A Yes, sir, a great number.

Q Were all the doors open, the different doors and gates?
A Yes, sir.

Q Were there people from upstairs passing through and around there? A Well, they didn't have to pass through there

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to go into the street, double doors, they walked down and through the barroom.

Q Was there a gate to this yard --- was that always open there? A Yes, sir.

Q And anybody could go in and out off the street? A Yes, sir.

Q Now, in this cafe. This is supposed to be the cafe (referring to the diagram). There was a door leading from that cafe into the areaway? A Yes, sir.

Q During the time that you were there was the cafe crowded with people? A The cafe was closed.

Q Where were the people, most of the crowd that you speak of? A Right in here (indicating).

Q Around there? A Yes, sir.

Q Was that in the areaway? A That is leading to the entrance from the yard.

Q Did you see many passing to and fro? A Yes, sir.

Q From the yard and from upstairs? A No, sir, they were all coming down from upstairs.

Q In what direction did they pass? A They had to come down this way (indicating).

Q Now here is the yard, here is the dining room where a great many went. A They had to come right through here and in there (indicating).

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Q Now after the persons came downstairs to their meal, to the dining room, did they go through --- how would they have to --- would they have to go out through the yard? A Yes, sir.

Q Because all this was closed (indicating)? A Yes, sir.

Q Then all these people that were in the dining room --- that is the only way that they could get out? A Yes, sir.

Q Now, did you have any words with anybody at all that night? Did you have any trouble with anybody? A No, sir.

Q No fight or quarrel with anybody? A No, sir.

Q Did you have any trouble with Platt? A No, sir.

Q You were always friendly with him? A Yes, sir.

Q Did you strike him at all? A No, sir.

Q Did you have any reason for striking him? A No, sir.

Q Did you see anybody strike him? A No, sir.

Q Do you know who struck him? A No, sir.

BY THE COURT:

Q Were you present in the yard when he was struck? A No, sir.

BY MR. KIER:

Q I understand you had no argument with anybody at all?
A No, sir.

Q You didn't have any trouble with any Bavarian? A No, sir.

Q You were not arrested until two weeks after this occurrence? A Yes, sir.

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Q Is that true? A Yes, sir.

Q How near to that occurrence were you living during those two weeks? A Three blocks.

Q How many times did the officer come to your house?
A About seven or eight times.

Q During the two weeks? A Yes, sir.

Q Did he see you frequently? A Yes, sir, he seen me frequently.

Q Spoke with you? A Yes, sir.

Q Never attempted to arrest you? A No, sir, never made an attempt to arrest me.

Q After you left the saloon that night did you see any fighting or trouble? A I went right down home.

Q Did you see fighting in the yard? A Yes, sir.

BY THE COURT:

Q Is there a fence around this yard?

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A Yes, sir.

Q Did you pass through the yard in order to get out?

A Yes, sir.

Q When you were asked by Albrecht to leave the place you walked through the yard? A Yes, sir; walked through the yard.

Q Then through the gate? A There is no gate there, your Honor.

Q What did you do, walk on the step? A No, sir, there is a door.

Q A door in the fence? A Yes, sir.

Q A door in the fence? A Yes, sir.

Q Was it closed when you got there? A It was open.

Q Wide open, left that way? A Yes, sir.

Q Now when you went through there, did you close the door? A No, sir.

Q Left it open? A yes, sir.

Q Who was in the yard as you and Lang passed through?
A Lang went out before me and there was a fight with some Polacks.

Q Who was in the yard as you passed through? A Well there was a fight with some Polack in this yard.

Q About how many? A About 10.

Q There was 10 in the yard at the time you passed

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through? A Yes, sir.

Q They were having a fight you say? A Yes, sir; they were having a fight.

Q Among themselves? A Yes, sir.

Q Now as you passed through did you see Platt anywhere?
A No, sir.

Q Did you see Burns anywhere? A No, sir, I didn't see Burns.

Q Platt was in the place when you left? A Yes, sir.

Q Burns, I think testified and Albrecht certainly he saw did that you almost instantaneously as he heard a crash of some object striking Platt, that he saw you and Lang running through the yard away from where Platt was. Now do you testify that that is not true? A Yes, sir.

Q That you were not running? A No, sir, I was not running.

Q And that you were not there at any time when you knew that Platt was there? A No, sir.

Q They testified that at that time they saw you running through the yard away from the direction in which Platt had fallen and that there was nobody in the yard except yourself and Lang. Now, do you testify that that is not true?
A No, sir, that is not true.

Q You say that there were about 10 Polacks in the yard

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fighting among themselves? A Yes, sir.

Q What were they fighting with? A I couldn't say.

Q How do you know that it was Polacks? A Well, the voice sounded like as though they were talking in a foreign language.

Q Do you know the Bavarian language when you hear it?

A Well, yes, sir.

Q Do you speak German? A Yes, sir.

Q Did you speak German with these people that were up in the Bavarian society?

(No answer).

Q Did you hear them speak German? A No, sir.

Q What were they speaking, the Bavarians? A The Polish language.

Q They were speaking Polish, were they? A Yes, sir.

Q Does Lang speak German? A Yes, sir.

Q How this Bavarian spoke what language in ordering out Lang-- he ordered him out? A He just grabbed hold of him and says "Get out of the place".

Q He used English then, did he? A Yes, sir.

Q Was Lang drunk? A Well he had about three beers, he knew what he was doing though.

Q How about yourself? A I had about the same but I don't know what I was doing.

THE COURT: We will suspend here.

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(The Court then admonishes the jury in accordance with Section 415 of the Code of Criminal Procedure and takes a recess until 2 o'clock.

AFTER RECESS.

C H A R L E S S C H M I D T, the defendant, resumes the stand.

CROSS EXAMINATION BY MR. BOSTWICK:

Q What time did you say you left your home on the night of November 13th? A 7.30 p.m.

Q Where did you go then? A Stood at the 149th street corner and Courtland avenue.

Q You stood there from half past seven up until what time? A Till about half past nine.

Q Half past nine? A Yes, sir.

Q Anybody with you? A No, sir.

Q What did you do at half past nine? A Lang happened to come along and asked me to have a drink.

Q It was about half past nine that Lang came along?
A Yes, sir.

Q You had known Lang before? A Well, yes, sir.

Q A long time? A Yes, sir.

Q How long a time? A About 10 years.

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Q Friendly with Lang? A Well, yes.

Q What you call chummy with him? A No, sir.

Q Did he live in the neighborhood? A No, sir.

Q Did he come there to meet you that night?

A No, sir.

Q Just happened there by accident? A Yes, sir.

Q You didn't see Lang often, did you? A No, sir,
not very often.

Q How often do you suppose you did see him? A Twice
a week.

Q Did you know what Lang did for a living?

A No, sir.

Q Did you ever visit at his home? A No, sir.

Q Know any of his people? A No, sir.

Q Had you seen him substantially twice a week for
any period of time? A No, sir.

Q How long? A About four weeks.

Q Buy you had seen him off and on for 10 years?

A yes, sir.

Q Did you know anything about Lang? A No, sir.

Q Did you know whether he had served any terms in the
Workhouse? A No, sir.

MR. KIER: I object to that.

THE COURT: What is your objection.

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MR. KIER: Irrelevant, whether Lang served a term in the Workhouse or not.

THE COURT: You put on some witnesses to testify that this man's character was the finest in the world. The jury would like to know whether a man's whose character is said to be the finest in the world associates with men who have been convicted.

MR. KIER: The reason I object is -- I don't object to be captious but I object because even if Lang was in the Workhouse how can it affect this man or his case. That is the reason I object.

THE COURT: The jury may think that a man --

MR. KIER: I will withdraw the objection.

BY MR. BOSTWICK:

Q Did you know that he had been arrested for burglary in Mount Vernon? A No, sir.

Q In 1907? A No, sir.

Q Did you know that he had been convicted in January 8, 1909? A No, sir.

Q Did you know that he had served six months in the Penitentiary? A No, sir.

Q Did you know that he went by the name of Charles Frey? A No, sir.

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Objected to. Objection overruled. Exception.

Q Yet he was a friend of yours? A Yes, sir.

BY THE COURT:

Q You have known him for 10 years? A Yes, sir.

BY MR. BOSTWICK:

Q Then at 9.30 o'clock you went into the saloon with your friend Lang? A Yes, sir.

Q How soon thereafter did Byrne or Platt or both appear? A About three-quarters of an hour.

Q Then who appeared? A Byrne and Platt.

Q Were they together? A Yes, sir.

Q What was done after the four of you got together?

A Lang invited them to have a drink.

Q Did all four take a drink? A Yes, sir.

Q I understood you correctly then that it was upon the invitation of Platt and Byrne that you went to Protection Hall?

A Yes, sir.

Q That was three blocks away? A Yes, sir.

Q About what time did you start for Protection Hall?

A I should judge about half past 11.

Q You got to Protection Hall within about the period of time it takes to walk three blocks? A yes, sir.

Q All four of you got in Protection Hall? A Yes, sir.

Q Now will you indicate by the letter Z the way you

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entered the premises known as Protection Hall. This is Courtland avenue and this is 152nd street (referring to the diagram)? A Yes, sir.

Q This is what is commonly known as the yard ? A Yes, s

Q And so marked on the diagram, and this place where it says "five feet" is what is known as the area. The bar is where it is indicated by the word bar. The door to the street on Courtland leading into the yard is marked "C". You entered by the door marked "C" which you have added the mark "Z" on People's Exhibit 1 in evidence? A Yes, sir.

Q Did you then walk through the yard? A Yes, sir.

Q And did you enter by the door "A"? A Yes, sir.

Q Where did you go after you had passed through the door "A"? A We went into the -- he has got a back room there in back of the barroom (indicating where the back room is).

Q You go through that door (indicating)? A Yes, sir, right here (indicating) .

Q Went through the door marked "J" -- may I mark it "J"? A Yes, sir.

Q Then where did you go? A Went and sat down.

Q In this room? A Yes, sir.

Q Marked back room? A Yes, sir.

MR. BOSTWICK: I do this with consent of counsel.

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Q Did you have any drinks there? A Yes, sir.

Q Did all of you have a drink? A Yes, sir.

Q Did Albrecht drink with you? A Yes, sir.

Q Did Huckle leave you while you were drinking?

A Yes, sir.

Q Do you know where he went? A He said he was going to the toilet.

Q Did Lang go to the toilet at any time? A I didn't see him go away.

Q Were you present when somebody put Lang out?

A Yes, sir.

Q Who was present at that time? A Huckle, Byrne and I, Albrecht and Platt and there was quite a few others there.

BY THE COURT:

Q Huckle and Byrne is the same man? A Yes, sir.

Q You called Byrne Huckle? A Well, yes, sir.

BY MR. BOSTWICK:

Q What did this man say to Lang? A He says to he says,
Lang "Get out of the place"; "get out".

Q Did he put him out? A Yes, sir.

Q Did he use force in putting him out? A Yes, sir.

Q Now when he put him out, out of which door did he put him? A I only seen him leaving, throwing him out of the

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back barroom door.

Q You saw him put him through the door "J"? A Yes, sir.

Q On people's Exhibit 1. How soon after Lang was put out did Albrecht say anything to you about going out?

A About three minutes.

Q What did Albrecht say to you? A He says "Well, you might as well get out too".

Q Did you get up and go out? A Yes, sir.

Q Then you went out through that door "J" also?

A Yes, sir.

Q Then did you pass through door "A"? A Yes, sir.

Q Into the yard? A Yes, sir, into the yard and through door "Z".

Q When you got to the yard was Lang in the yard?

A No, sir.

Q Was anybody in the yard? A No, sir only the few Polacks that had an argument there.

Q Only a few Polacks? A Yes, sir.

Q You had no difficulty in seeing them then, did you?

A I seen them there, yes, sir.

Q You had no difficulty in seeing them there?

A What do you mean?

Q They were plain in view? A Yes, sir, they were

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in view.

Q You could see very readily that they were there ?

A Yes, sir.

Q You could see over the whole yard? A Yes, sir.

Q Now, not finding Lang in the yard where did you go then? A I walked down through the door "Z" on to the street Courtland avenue.

Q Then did you go north or south? A South.

Q You went south? A Yes, sir.

Q Where did you find Lang? A Standing on the corner of 152nd street and Courtland avenue.

Q How far did you go before you came back? A I didn't come back.

Q Didn't you go back to the saloon? A No, sir.

Q Didn't you say at the door "You come out there you son of a something"? A No, sir.

Q Or any words to that effect? A No, sir.

BY THE COURT:

Q Did you ask anybody to come out after you left the saloon? A No, your Honor.

Q Did you hear anybody demand that somebody else should come out? A No, sir.

BY MR. BOSTWICK:

Q You never made any threat or any call to anybody to

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come outside? A No, sir.

Q Did you have a tussel at the door with the saloon keeper Mr. Zacharzowsky? A No, sir.

Q Did you see Lang have any disturbance with Mr. Zacharzowsky at the door? A No, sir.

Q After you got to 152nd street and Courtland avenue where did you go? A Right straight down Courtland avenue.

Q How many blocks down did you go? A Three blocks.

Q Three blocks down? A Yes, sir.

Q Right down Courtland avenue three blocks? A yes, sir, right down Courtland avenue three blocks.

Q Is your memory quite certain about that? A Yes, sir.

Q Then you didn't go through 151st street? A No, sir.

Q Did you ever see this stone before? (Referring to People's Exhibit No. 2) A No, sir, never.

Q Did you see the door open after Platt had been struck? A No, sir; I wasn't there.

Q Did you run through that yard at any time? A No, sir.

Q Did Lang run through that yard at any time with you? A No, sir.

Q Do you remember when Lang was arrested? A Yes, sir.

Q Were you in his company at that time? A Well, no sir.

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Q What is that? A No, sir.

Q You were not in his company? A No, sir.

Q Did you not state to the officer the day before he was arrested that you didn't know where he could be found?

A The day before he was arrested? I didn't see the officer the day --

MR. KIER: I object to that. The officer hasn't given such testimony as that.

THE COURT: The day before Lang was arrested.

THE WITNESS. No, sir, I have not seen the officer.

MR. KIER: The officer has not testified to anything of that kind.

BY MR. BOSTWICK:

Q What time was it when you left for the last time Protection Hall? A About a quarter after one.

Q When was the first time that you learned that Henry Platt had been struck? A The night, Sunday night, the 15th of November.

Q Who told you? A Detective Wickman.

Q You did not know he had been struck before that?

A No, sir.

Q Do you remember what the altercation was or the row between Lang and the man who put him out? A No, sir.

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Q Did you know why Lang was being put out?

A No, sir.

Q But you saw him put out? A I seen him put out, yes, sir.

Q Was there anything said to you why you should go out? A Why I should go out? No, sir.

BY THE COURT:

Q Haevn't you some idea why you and Lang were requested to go out? A No, sir.

Q Did you know at the time why you were requested to go out of the saloon? A No, sir.

MR. KIER: The testimony is that the other young man, Albrecht, took hold of him and walked him out, didn't tell him to go out, Albrecht didn't say to him, "You must get out".

THE COURT: I thought the witness said immediately after Lang was put out Albrecht turned to this man and said, "You get out too".

MR. KIER: But he was not ordered out; he had been in no disturbance.

THE COURT: It conveyed to my mind the impression that there was a direct connection between the putting out one and ~~the~~ requesting the other to go out. I asked him what his view was in regard to that,

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why was it that Lang was put out and he was requested to go out.

MR. KIER: Albrecht said he had been sick and was sitting there vomiting. Albrecht said he had been sitting there sick and he just took hold of him and said, "Get out" while he was sitting there vomiting.

BY THE COURT:

Q Did you hear the conversation between this Bavarian and Lang? A No, sir.

Q But you heard the Bavarian tell Lang to get out?

A Yes, sir.

Q What reply did Lang make? A He didn't make any reply.

Q What did he do, just get out? A The Polack had caught hold of him and threw him right out of the door.

Q Who threw him out of the door? A The Polack.

Q The Polack threw him out of the door? A Yes, sir.

Q Did he fall? A I don't know, I only seen hi go out one door.

MR. BOSTWICK: I don't think I have this in evidence and if I have it won't hurt to repeat it.

BY MR. BOSTWICK:

Q How long after Lang was put out through door "J"

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did you leave the place? A About 10 minutes.

THE COURT: I thought you said three minutes.

My ear might not have caught it right.

BY THE COURT:

Q Didn't you say three minutes before there was something occurred in three minutes? A Yes, sir.

Q Three minutes? A Yes, sir.

Q Was it three minutes or 10 minutes? A Three minutes.

Q It was three minutes ? A Yes, sir.

RE-DIRECT EXAMINATION BY MR. KIER:

Q Did you have any words or any trouble with anybody in protection Hall that night? A No, sir.

Q Or any other place in the world? A No, sir.

Q When you met these people, Platt Byrne, they knew Lang as well as you did? A Yes, sir.

Q And Joe knows Lang, everybody around there knows Lang, is that true? A Yes, sir.

Q You are not the only one who knows Lang? A No, sir.

Q Other people in the party were acquainted with him?

A Yes, sir.

THE COURT: Don't you testify. This is the man to testify. You ask him questions. You see you have told him all this. You have told him that

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Joem knew Lang and that somebody else knew Lang.
You didn't ask him.

MR. KIER: I will ask him now.

BY MR. KIER:

Q Does Joe know Lang? A Yes, sir.

Q Does Platt know Lang? A Yes, sir.

Q Does Byrne know Lang? A Yes, sir.

Q Does Albrecht know Lang? A Yes, sir.

BY MR. BOSTWICK:

Q Don't you know, as a matter of fact, that Byrne
for
met Lang the first time that night? A No, sir.

Q Do you know of your own knowledge that he had
ever known Lang before that night? A Yes, sir.

BY THE FIRST JUROR:

Q You say you are 19 years old? A Yes, sir.

Q You say ~~that~~ you know that Lang for how long?

A About 10 years.

Q 10 years? A Yes, sir.

Q When nine years old? A Yes, sir.

Q From school together? A No, sir.

Q How did you know him? A Well on the street, after
school hours.

Q In living around that section? A Yes, sir.

Q What was your sickness in that saloon? A I was

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feeling ill in the stomach.

Q Through the drinking? A Yes, sir.

Q What did you drink? A Beer.

Q Nothing but beer? A No, sir.

Q When you left the saloon to go out into the doorway were those Polacks -- what side were they on, in front of you, the left or right? A On the left hand side.

Q Was Platt there when you went out? A No, sir.

Q He was not there? A No, sir.

BY THE COURT:

Q What were the Polacks fighting with? A I couldn't say what they were fighting with.

Q Were they beating each other or striking each other?
A Yes, sir.

Q Were they fighting among themselves or fighting somebody else, a third party? A Why they were fighting among themselves.

Q Just among themselves? A Yes, sir.

BY THE SEVENTH JUROR:

Q From the time you entered this Protection Hall with Lang were you separated at any time during the evening until Lang was put out? A No, sir.

Q You were together all the time? A Yes, sir.

Q Now when you went out after Lang you walked right

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through this yard during this fight? A Yes, sir.

Q Didn't stop to look at the fight? A No, sir.

Q Walked calmly out? A Yes, sir.

F R E D A S C H M I D T, a witness called on behalf of the
defendant, being duly sworn, testified as follows.

DIRECT EXAMINATION BY MR. KIER:

Q Where do you live? A 531 Courtland avenue.

Q Mrs. Schmidt, is the defendant your son? A Yes,
sir.

Q Your only son? A Yes, sir.

Q Only child? A Yes, sir.

Q Where do you live? A 531 Courtland avenue.

Q Does he live with you? A Yes, sir.

Q How old is he? A 19.

Q Now, up in the neighborhood of 152nd street and
Courtland avenue -- how long have you lived in that neighbor-
hood? A About 15 years.

Q Has this boy been living there with you all this time?
A yes, sir.

Q Does he work for a living? A yes, sir.

Q Always worked since he left school? A Yes, sir.

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Q After November 13th last year, two weeks after that, ^{did} up until December 1st, the officer visit your house to see this boy about the case?

MR. BOSTWICK: Objected to.

THE COURT: That is not very material.

Q Were there any visits made by anybody to your son during those two weeks? A What do you mean?

Q Did the officer visit your son during the two weeks ?

A yes, sir.

Q Were you present at some conversation? A Yes, sir, well he was in six or seven times in my house.

Q Did you hear the officer say anything?

(No answer).

Q What did you hear the officer say. Tell what the officer said? A Well, the officer said, he asked my son if he knows where Lang is, he didn't know, he couldn't say where he is; then he said ~~to him~~ that he thought my son and Lang did it, and thought the bartender Albrecht done it, because he got a nasty look, and mean look right in his and face from that he thought that he done it.

Q Who has a nasty look? A Albrecht.

THE COURT: Albrecht was one of the witnesses?

MR. KIER: Yes, sir.

BY MR. KIER:

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Q Where was your boy, where was the defendant when the officer came these six or seven times? A He was home. Once he had to wait, he wasn't home from work, and a couple of times he was washing himself, he came home from work and he was not done.

Q He remained home for the officer, didn't he, to see the officer? A Yes, sir, sure.

Q Has he always been a good boy? A Yes, sir, he was always a good boy, always working and brings me home the money, never keeps any money back.

Q You never had any trouble with him? A Never did.

MR. BOSTWICK: Did the jury hear the first part of her testimony. She spoke in rather a low voice?

THE COURT: If they did not we will have it read.

THE FOREMAN: Yes, sir.

RE V. WILLIAM THEODORE JUNG E, a witness called on behalf of the defendant, being duly sworn, testified as follows.

DIRECT EXAMINATION BY MR. KIER:

Q Your address? A 385 East 155th street.

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Q You are a minister of the Gospel? A Yes, sir.

Q Have you a church at that place ? A Where?

Q Well up in the Bronx? A Yes, sir, in the Bronx,
the church is on 156th street between Courtland and Morris
avenue.

Q Not the address you just gave? A No, sir, that
is the parsonage in the rear of the church.

Q What is the name of the church? A St. Matthews
Evangelical Lutheran Church.

Q Do you know the defendant Schmidt? A Yes, sir, I do.

Q How many years have you known him? A Well, I have
known him about since I am up in the Bronx.

Q That is going on -- A 10 years. He has been
in the Sunday School.

Q Do you know other people up there that know him?
A Yes, sir.

Q Is his reputation for peace and quietness good
or bad? A It is very good to my knowledge as I have never
heard anything against him, anything that he has ever committed
wrong it never came to my knowledge.

NO CROSS-EXAMINATION.

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A N N I E M U S T, a witness for the defendant, having been duly sworn, testified as follows.

DIRECT EXAMINATION BY MR. KIER:

Q Where do you live? A 344 East 14th street.

Q A married lady, Mrs. Must? A Yes, sir.

Q Live with your husband and family? A Yes.

Q Do you know the defendant, Charles Schmidt?

A Yes, sir.

Q How long have you known him? A 8 years.

Q 8 years? A Yes, sir.

Q Have you lived alongside of him? A Right next door.

Q How many years did you live alongside of him?

A Six years.

Q Do you know other people in the neighborhood that know him? A Yes, sir.

Q What is his reputation among the neighbors for peace, quietness and good order? A It is good.

Q A good boy? A Yes, sir.

MR. KIER: The defendant rests. I renew my motion.

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R E B U T T A L.

J O S E P H Z A C H A R O W S K Y, a witness for the people,
recalled in rebuttal, testified as follows.

BY THE FIRST JUROR:

Q Now one party says they were Polacks and we hear that
they were Bavarians -- Bavarians as a rule speak German?

A Yes, sir. There was no Polish people in the place
whatever. If I would be considered as a Pole I might be the
only one.

Q What are you, what nationality originally? A Well
I am a Persian.

Q A Persian? A Yes, sir, near the Austrian boundary
line.

Q You speak Polish? A Yes, sir.

Q Do you speak Bavarian?

(No answer).

BY MR. KIER:

Q The foreman wants to know if you speak Bavarian?

A Yes, sir, I can understand it.

BY THE COURT:

Q There are a great many Polish people around your neigh-
borhood? A Yes, sir.

Q And they deal with you, lots of them? A Yes, sir,

Q They come into your place, plenty of them? A Yes, sir,

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Q They are very welcome there? A Yes, sir.

Q On that night that yard door was open there? A Yes, sir.

Q Anybody could come in there all during the evening?
A yes, sir.

Q Polacks or anything else? A Yes, sir.

Q This was the only door open? A Yes, sir.

BY THE COURT:

Q You speak Polish? A Yes, sir.

Q Did most of those Bavarians up there speak Polish?
A Not one.

Q How many were there? A To my knowledge the party consisted of about 65 to 70 people.

Q Now you gave the name of the society the other day, what was it? A Well this is a party that comes from 154th street, one is name Fisher, and another lady, they are Bavarian people from the neighborhood together and they were celebrating what they call Kurfirle which means as much as the Harvest Festival.

BY MR. KIER:

Q Mr. Joe, the language they were speaking was not the German language? A Yes, sir.

Q Was it a dialect of the German -- Bavarian is not German, is it? A Yes, sir, exactly.

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Q One of the dialects? A Yes, sir, exactly German.

Q What I mean to say is a person who is a German would he understand it -- would any German understand it?

A yes, sir.

Q How many dialects have they? A I don't know, I am not a linguist.

BY THE COURT:

Q Now the material part of it-- getting right down to the time that you were standing near the door, standing near the door, the time that you were standing near the door and heard the crash and went out and immediately found Platt lying on the ground. Now, did you testify that you saw somebody in that yard at that time? A I didn't testify to such a kind, your Honor -- I only seen them two defendants running out of the door.

Q Did you see them running out the gate? A Yes, sir. I did.

Q Who was standing near you at the time you saw the two defendants, Schmidt and Lang, running out of the yard?

A The witness Jacob Albrecht.

Q Whereabouts? A He stood alongside of me.

Q How about Byrne? A I couldn't recollect that; I couldn't notice, it was so quick, I couldn't pay no attention only to what was in my mind's eye.

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BY A JUROR:

Q Who was the man pushed in the chest when you shut the door? A The defendant Schmidt, because it was he stood right in the door. He says, "Come out, we will trim you in the yard". I pushed him back and I says "Don't push me, walk about your business, what is the matter with you", I caught hold of the door and tried to shut the door.

Q This was in the hallway right upagainst the door? A No, sir, this was not in the hallway, this was in the little partition, this was between the yard and the hallway here, right here in this door. (Indicating)

Q Indicating door "A"? A yes, sir, right in this door. The defendant stood right here, right in the open door, I could take the door out of his hand.

Q What was he trying to do? A Well, he asked anybody to come out in the yard to trim him. I pushed him back and tried to shut the door when the ~~crash~~ was delivered.

Q Who did he speak to when he said he wanted him to come out? A He was speaking generally to anybody, I didn't know what was happened before that time because I was serving the suppers. He said, "Come out there, we will trim you".

Q Do you say that the man whom you pushed out of the door was drunk? A No, sir, I didn't say that.

Q Would you say that? A Well I couldn't say that he

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was exactly drunk, he might be a little under the influence.

Q He got the liquor in your place, didn't he?

A He got beer, no liquor.

Q This young boy was an hour and a half in your place?

A He is not a boy.

BY THE FIFTH JUROR:

Q Can you tell us the reason these two men Schmidt and Lang were ordered out of your place? A Well out of my knowledge I cannot tell you.

THE COURT: He can testify only of his own knowledge.

THE WITNESS: I cannot testify from my knowledge.

MR. BOSTWICK: He was not present.

THE WITNESS: I was not present because I was attending to the suppers in the back of the diningroom I was just getting the waiters ready and serving the people in the back diningroom in the big dining room.

BY THE THIRD JUROR:

Q This man Albrecht how long has he been in your employ, working steadily for you? A No, sir, he did not.

Q Just hired him for that night? A He comes before in my place, he is employed by another man and I had at that

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time a new helper, a new porter, and I asked him, because he is a handy man I says, "Jake, will you be kind enough to help me along, I got a new porter", I want him to give him all the points that is necessary, to help me along with everything to see that it is in proper shape, so I hired him for that special occasion.

Q In what capacity was he employed for that night, to keep order? A No, sir, not to keep order. He was showing this new man what he was to do. If they want a quarter of beer to be tapped upstairs he should show him how the beer is getting tapped, and that everything is going in proper shape.

Q Doing general work? A Yes, sir.

Q Everything that he saw to do? A Yes, sir because he knows my place, knows the place and knows what is to be done.

BY THE FOURTH JUROR:

Q I don't remember whether you testified that you were present when Lang was ordered out? A No, sir, I did not testify to that.

Q You didn't see Schmidt go out of the door? A No, sir, only seen him when I was attending to the suppers; I don't know for what reason that happens at that time. I only know that there is something going on when I stood in front of that door and tried to collect the amount for the suppers. I heard some kind of a noise.

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Q What kind of a noise? A Some kind of a noise.
I opened the door to find out.

Q What did it sound like, a number of people? A No, sir,
only one, he was only one who makes a noise.

BY MR. KIER:

Q When the crash came? A No, sir, before the crash came.

Q When the treats were made? A Yes, sir, when the
treats was made I found there were threats made "Anybody come
out to trim him".

Q That was what first attratced your attention to the
yard? A yes, sir.

Q You heard somebody talking outside the door?

A Yes, sir.

Q The door was open? A Yes, sir, he held the door open
and stood right in the open door.

BY THE COURT:

Q You say he stood there, was his hand on the knob?

A Yes, sir, I caught hold of his hand, pushed him back,
I caught hold of the door from his hand and I said "Get back
there, go home."

BY A JUROR:

Q Did you close the door fully? A No, sir.

Q THE door was still open with hss hand on the knob?

A No, sir, the door was about three quarters closed when
the crash came.

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Q He was still at the door when the crash came?

A No, sir, the door was between me.

Q When you closed the door three-quarters he was outside the door? A yes, sir I was inside.

Q Still holding the door when you heard the crash?

A No, sir he didn't hold the door no more.

Q Did you see him? A I couldn't see him then because it was so quick, as soon as I made the swing I could not see him because he stood between the door and between me.

BY MR. KIER:

Q When you heard the crash this man was right there alongside of you? A No, sir, not alongside of me.

Q This Albrecht who works around there -- did you hear anything about the officer wanting him, you hadn't heard that?

A No, sir.

Q How long is Albrecht working there for you as assistant bartender or whatever he does, handy man? A Well he was only helping me out.

Q How many times does he help you out? A Occasionally when I need him.

Q What length of time has he been doing that for you?

A Sometimes once or twice a week, sometimes I don't get him probably once in three weeks.

Q For the period of a year or two he has been doing that? A No, sir.

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Q A pretty good friend of yours, isn't he? A Because sometimes he has got different engagements.

Q He has no regular occupation? A I don't know.

THE COURT: Any question that the jury or any member of the jury might wish to have cleared up by the testimony of any witness on either side we will return him to the stand and further interrogate him, any witness.

C H A R L E S S C H M I D T, the defendant, recalled.

BY A JUROR:

Q You heard it testified that Lang was six months in the Penitentiary or somewhere? A Yes, sir.

Q Did you miss him during the time, you said you knew him 10 years? A Well, I didn't know where he was.

Q Did you miss him? A Well, I didn't miss him, no, sir, he was no pal of mine or anything; I didn't have to go around with him.

Q How many times did you say you saw Lang when you did see him? A Through what time?

Q You said you saw Lang often, how often did you see him? A Once or twice a week.

Q You didn't see him for six months? A Six months.

TESTIMONY CLOSED.

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THE PEOPLE vs. CHARLES SCHMIDT.

THE COURT'S CHARGE.

SWANN, J.-

Gentlemen of the jury:

The defendant, Charles Schmidt, is on trial before you under an indictment which charges robbery and on the same state of facts charges assault in the second degree.

The first count has been withdrawn from your consideration. All of the counts of the indictment are withdrawn from your consideration except the count charging assault in the second degree upon one Platt who has testified here before you and the testimony of the physicians who treated him has also been produced here on the trial of this case.

The defendant, Schmidt, is indicted jointly with another named Lang, but each demands a separate trial of his case, and under the law each is entitled to it as a matter of right. Therefore they must be tried separately otherwise they would be tried jointly and both would be now on trial before you.

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It is alleged by the People's witnesses that the complaining witness, Platt, was injured in the left side of his head on the early morning of November 14, 1909 at the premises 152nd street and Courtlandt avenue, those premises being known as Protection Hall, of which Mr. Joseph Zacharzowsky, who has been a witness here before you is the proprietor. Just at what hour it occurred I do not recall but anyway to my best recollection it was somewhere around one o'clock in the morning. It may be a little later, it may be a little earlier but you will remember the testimony and not take any of the facts of the case from the Court, -- merely take the law.

I shall have to review the testimony slightly in order to apply the law to the facts or the testimony as I have heard it, but in the last analysis you are to determine what the evidence was, what the evidence proved and apply the law as I will explain it to you.

It was found that certain money amounting to about \$7.00 had been abstracted from Platt's pocket sometime after he was struck, but there is nothing whatever to connect this defendant or the defendant Lang with the abstracting of that money, because nobody saw Lang or Schmidt touch the body of Platt. The testimony, on the part of the People's witnesses, is that Lang and Sch-

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midst for some reason or other which Schmidt says he does not know were ordered out of the saloon. Platt was put out of the saloon by a Bavarian who seems, from the testimony, to have been some one in authority with the Bavarian Society which was holding a meeting upstairs in the ballroom. Then the defendant Schmidt was requested by Albrecht also to go out and he did go out. The proprietor says that after Schmidt got out he came back, opened the door, held his hand on the knob and gave an invitation to anybody in there to come out and get licked or "trimmed" I think was the expression used "come out and get trimmed", and he not wishing to have any altercation or any fuss in his place, as a matter of business, insisted upon Schmidt going out and he assisted him to get out. He closed the door partially in Schmidt's face and he says that while he stood there and within a few seconds afterwards he heard what he calls a crash and the other witness Byrne testifies that he heard it also. Albrecht testified that he heard this noise and Byrne's says that Albrecht shoved him aside, went out and found Platt lying prostrate on the ground. Byrne's says he went out after that and saw Albrecht holding Platt in his arms. Albrecht says that immediately upon going out that the first thing he saw was

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the defendants Schmidt and Lang fleeing across the yard in a direction opposite from that in which the prostrate body of Platt was lying and that he saw them make their exit from the yard. He says he did not hear them utter any sound; he says there was nobody else in the yard except these men who were in flight. The proprietor also says that he saw them in flight and there was nobody else in the yard at that time except the prostrate body of Platt. Byrne says his attention was so called toward Platt that he did not observe anything else. He says he saw Albrecht stopping down over the prostrate body of Platt and that is all that attracted his attention; he said he didn't pay any attention to anything else so that he did not testify to having seen anybody else in the yard. He said his attention was not called to that, that his attention was so centered upon the injured man that he did not pay attention to anything else.

Now, the defendant Schmidt says that he went out sometime before that and that when he went out he walked out in an orderly manner, he went through the door that they say he went through but that he did not see Platt in the yard at all but saw approximately 10 Polacks in a fight; he does not know who they were fighting with, but they were fighting and he walked along through

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the yard and that he met Lang on the outside and they then went to their respective homes. There was a witness by the name of Frey who says that at about that time he saw the two defendants, Lang and Schmidt, walking rapidly in a westerly direction through 151st street.

There has been something said here by counsel in regard to lack of motive on the part of Lang and on the part of Schmidt to attack Platt. It is a principle of law that motive is not necessary. It is not necessary to show any motive. A man may do an act without a motive. Now motive is a very persuasive thing. We usually act in human affairs through some motive. We may do a thing maliciously without a motive but we usually act ^{through} by motive. There has been evidence here that these men had been ordered out of the saloon and of course, the jury would be justified, if in their wisdom they think it proper to do so, to find that in all human experience when a man is ordered out of a place, out of a saloon, it causes a spirit of resentment. Now mind you, gentlemen, I do not suggest to you how you should reason. You are representative men in this community and you are put there to reason with your own good minds. All the Court can do is to discuss these matters with

you. You are not under any obligation to take what you may deem to be my view of this case. If you think that I have a view as to the guilt or innocence of any defendant who may come before you for trial it is your duty to eliminate that and find your verdict upon your own unbiased judgment unaided by the fact that you think that the Judge or the lawyers may have a different view from yours. You hold your own views on this subject. I do not mean to say that each individual juror must be perverse or stubborn in regard to his views because we have one view and then when we hear argument a light strikes in on us and we say "I was wrong in the first instance", that is the way to act. When you really believe you are wrong in your first conception of the case why you must readily change it to what you finally believe to be right and let your verdict be based upon that. Do not let any gentleman hang a jury, as it is ^{called} known, because he feels he ought to stick to his first impression. You know that in our human affairs sometimes our first impressions are right, sometimes wrong. Let us be candid with each other and if we are wrong and our fellow jurors through their arguments or calling attention to certain facts make us believe that our original conception of the case was wrong admit that we

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were wrong and go right over to them and say "Yes you are right on this", and base your verdict that way.

The Court in reviewing this evidence in a cursory manner has not any desire to persuade you either one way or the other. It is not proper that I should. You are the sole arbiters of the facts. You are the judges of the facts as I am of the law. You will take the law from me and then you will find the portions of the evidence that you think are worthy of belief.

The question of motive, as I say, of course, is very persuasive one way or the other. If there was a direct challenge to this man Platt to come out and get trimmed there would be decided motive, but, as I understand it, there was no invitation to any particular person to come out to get trimmed but to anybody.

Counsel has argued and the testimony here is that both Schmidt and Lang were drinking. Of course, it may be that they were what is known as fighting drunk,-- that is sometimes the case, fight anybody who comes along especially if you have been incensed by being thrown out of a place, lick anybody that comes out of the place. That may be the case; I don't know; it is all for you.

There is evidence here that the Bavarian was very offensive to one of them. It was dark and it may

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be, of course it is for you to say, that they thought Platt was the Bavarian that they wanted to trim; it was dark there. It may be that they had no resentment against Platt whatever. If you find that they had no intention to hurt Platt or even would not have struck Platt under any circumstances had they known it to be Platt nevertheless if you find that they had an intention to strike any human being, who ever he was, man , woman or child, and that this defendant directly or indirectly aided and abetted in the striking of that blow why, of course, you will find the defendant guilty. If the two together, Lang and Schmidt, decided they would trim any body who came out of that saloon by throwing a stone at him, striking him with a stone, and they decided that at the spur of the moment, both decided that it should be done, and Schmidt went to the door and gave the invitation to come out, as the proprietor said he did, and that thereafter Lang threw the stone why, if there was a preconcerted plan to throw the stone at the man who came out, at any man that came out, or some particular man that might come out, the defendant would be just as guilty as the man who threw the stone. It is not necessary in order to make a man guilty that he himself should do the overt act. It is only necessary that there should be a preconcerted common intent that

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the act should be committed and if the defendant aided, abetted, advised or suggested, and his act constituted some element toward the commission of the crime, such as the opening of the door, making the invitation for anybody to come out that wished to come out and get trimmed, he would be just as guilty as the man who threw the stone.

What is assault in the second degree?

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Assault in the second degree defined by the Penal Law as follows:

"A person who wilfully and wrongfully wounds or inflicts grievous bodily harm upon another either with or without a weapon, or who wilfully and wrongfully assaults another by the use of a weapon or other instrument or thing likely to produce grievous bodily harm is guilty of assault in the second degree". The evidence of the physicians in this case is that there was grievous bodily harm inflicted upon the complaining witness Platt. They have testified to you a part of his skull had to be removed on account of the pressure of the bone of the skull against the man's brain and that the injury is, according to my recollection is permanent in its nature.

Now by Section #2 of the Penal Law gives the following definition of a principal:

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"A person concerned in the commission of a crime whether he directly commits the act constituting the offense or aids and abets in its commission and a person who advises, counsels, or procures another to commit a crime is a principal".

Let us go back to the question of motive which has been discussed by the defendant's counsel. Motive is a question that may be debated by the jury on both sides. What motive had the defendant for striking the blow? I have already debated that with you. Let us go on the other side and see if the jury can find any motive on the part of the saloon keeper, or on the part of Byrne, or on the part of Albrecht for testifying as they did that they saw these men fleeing through the yard. Was there anything in the evidence which suggests to the jury a motive on the part of these witnesses to testify falsely in that regard. They have testified to their sense of vision, something that struck their sense of vision, Both the saloon keeper and Albrecht testify positively that they saw these two men. Was there anything in their testimony which leads the jury to believe that these men had a motive for testifying falsely against the defendant and the other defendant Lang or that they were mistaken in the men. Why you can debate the motive

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on both sides. As I say motive is not necessary to the ^{proof} truth of all the elements of the crime but it may be taken into consideration by the jury in determining whether any crime was committed or not. It is not a necessary element. As I say, a crime may be committed without any motive whatever.

The law provides that a defendant in a criminal action is presumed to be innocent until the contrary be proved and in case of a reasonable doubt whether his guilt is satisfactorily shown to the jury he is entitled to an acquittal.

Are there any requests to charge?

MR. KIER: I take an exception to the charge as given, to the whole charge.

THE COURT: Well some part of it was right.

MR. KIER: Yes, sir but I think you have argued the case of the people strongly and neglected the case of the defendant.

THE COURT: Well in what respect, for instance. Call my attention to it a little more specifically.

MR. KIER: I think your Honor put a great deal of emphasis on all the testimony of the people's case and you have neglected to argue any of our side.

THE COURT: Let us see, for instance, what you think I should have stated in regard to the defendant's

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case.

MR. KIER: You gave very little attention to his defense.

THE COURT: Such as what, for instance? You just state to the jury what you think I should have said in reviewing in a very cursory manner the evidence in the case, what I should have stated. I said that the defendant was the only witness for himself. I reviewed the testimony of the other witnesses for the prosecution. I They were more numerous and therefore took up more time necessarily in reviewing their testimony than to review the testimony of one witness. If there is any material part of it which you think I have omitted I would like to review that.

MR. KIER: Now your Honor, I wish to say this to begin with that Platt is the man who was hurt, Platt said he heard no threat. He was right at the place and he heard no threat against himself or anybody. Platt also said he had nothing against this man and that he stood five minutes right there inside the door; he didn't see anybody in the yard, also he did not see this man Schmidt in the yard. Of course, the number of witness have not so much to do with the case, there may be a great number of witnesses on one side and still the truth be on the other. At the same time the fact

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that Joe and his own employee, the bartender, they are the principal ones that are telling the story in this case and outside of them there is practically no other testimony. There is very little corroborating testimony. It is Albrecht, the employee and the employer Joe who tell the whole story.

THE COURT: It occurs to me that the material part of the defendant's testimony was stated to the jury. I did not take up one fact after another. I came right down to a few seconds before and after the commission of the act by some one. Now I bore upon the defendant's statement and stated to the jury that the defendant's testimony was that he went out, that he was ordered out, that he was assisted out by Albrecht and that he did walk through the yard.

MR. KIER: And about his being sick.

THE COURT: Is that very material?

MR. KIER: But your Honor here was a sick man, he was vomiting there.

THE COURT: He walked through the yard. He says that he saw Polacks fighting there; that he met Lang out on 152nd street and they went to their respective homes. If you would like the stenographer to read that you will find that that is about what I said. That is the material part of it and the balance of it, being

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on the sidewalk some two or three hours before that does not bear directly upon the case and it was not necessary for me to review that, but if there is anything that he said that I omitted -- for instance, I told the jury that he said he knew of no reason why they should order him out or why they should order his friend Lang out, he knew no reason why that should be done. I do not know of any other material part of his testimony that I did not touch upon. It was done in a very cursory manner because I cannot go over all the testimony.

MR. KIER: The real man ordered out was Lang. He was the man who had the trouble upstairs. This man had no trouble, he happened to be with him. He had no trouble with anybody. Lang had the trouble with the man upstairs. After Lang was ordered out this young man took hold of his coat and said, "You get out", there was nothing to show that there was any strong desire to get this man out. Lang was the man who was ordered out. Lang was the man who had the trouble. Then a man goes over to him and says, "You get out too". I wish your Honor to say to this jury that where good character is shown that it may be taken into consideration by the jury to such an extent that they may disbelieve the other testimony for the People and believe the

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man innocent.

THE COURT: Well, proof of good character if it is satisfactory to the jury of course can be taken into consideration by the jury, should be taken into consideration by the jury. The jury may find that notwithstanding the previous good character of the defendant or of a witness, the excellent reputation in the community, previous character, unblemished, they may yet find from the facts that the defendant was guilty of the crime charged.

MR. KIER: Will your Honor charge in my language that where good character -- where the defendant proves good character the jury may disbelieve the testimony, all the testimony of the people's witnesses and find the defendant not guilty.

THE COURT: They can do that without any proof of good character.

MR. KIER: Will your Honor charge in that language?

THE COURT: Yes, I will so charge. I do so charge. I also state to the jury that there is no hard and fast rule. It is for you to determine who is telling the truth. You may determine that in the way that you in your good judgment deem best. You may take your own good judgment and guide yourselves entirely by that without any hard or fast rule of law -- there is none. There is

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no rule of law -- nobody can tell you how to arrive at the truth. You can do that from your own experience in the government of your own personal affairs of a more serious nature in life, from your experiences in contact with men. Of course, if in any case the character witnesses satisfy your minds that the defendant is of previous good, unblemished character both for truth and veracity and for peace and quiet why you are entitled to give that all the weight that in your good judgment you deem best. You can give it just such weight as in your judgment you deem best. You are not bound to do anything you do not deem proper.

MR. KIER: I respectfully except to the latter remark of the Court and to your Honor's refusal to charge and I take an exception to the general charge.

MR. BOSTWICK: I request your Honor to charge that if they disbelieve any witness as having told or given false testimony they can disregard the entire testimony of such witness, as to a material fact.

THE COURT: If you believe that any witness who has appeared before you on either side has knowingly and wilfully testified falsely to a material fact you would be justified in putting aside all of the evidence of that witness, entirely disregarding all of his testimony.

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At the same time you would be also justified , if in your judgment you deem it proper and fit to do so, to eliminate only those parts of the testimony which are untruthful in your judgment and base your verdict upon the parts of the testimony of the witness you deem worthy of belief. In other words there is no hard and fast rule to tell you how to arrive at the truth. You know as men of common experience that there is no way to look at a man's face to tell whether he is telling the truth. The only thing is you have to take many little facts into consideration and determine it for yourselves, arrive at it in such an intuitive manner and after reasoning in the best manner that you know how determine who is telling the truth and base your verdict on those parts of the evidence you think are truthful and render your verdict accordingly.

Your verdict will be either not guilty or guilty of assault in the second degree or if in your judgment you deem the wound so slight you may bring in a verdict of guilty of assault in the third degree which is a mere misdemeanor. So that your verdict will be not guilty, guilty of assault in the second degree or guilty of assault in the third degree.

(The jury retire and return in to court state that

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they find the defendant , Charles Schmidt, guilty of assault in the third degree with an earnest recommendation to the Court for clemency.)

(The jury was polled and severally confirmed their verdict.)

MR. KIER: Now, your Honor, the defendant moves the Court for a new trial for the following reasons: First, the verdict is against the evidence, secondly, the verdict is against the law, thirdly, the learned Judge erred when he refused to direct the jury at the end of the people's case to render a verdict of not guilty of the charge of assault in the second degree having taken the other counts from the jury.

I also move in arrest of judgment for all the reasons set forth in the Code of Criminal Procedure.

I have some thought in relation to a certificate of reasonable doubt and would your Honor let this matter stand over for a few days at the convenience of your Honor?

THE COURT: How much time would you like?

MR. KIER: About Wednesday.

(The defendant remanded until Wednesday, January 19th).

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